(23,390)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 815.

ARTHUR L. SELIG, PLAINTIFF IN ERROR,

vs.

CHARLES E. HAMILTON, AS RECEIVER OF EVANS, JOHNSON, SLOANE COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 U. S. District Court, Southern District of New York.

CHARLES E. HAMILTON, as Receiver of Evans, Johnson, Sloane Company, Plaintiff,
against
ARTHUR L. SELIG, Defendant.

Docket Entries.

1909.
Nov. 29th. Filed Præcipe and issued summons.
1910.
Jan. 7th. Filed answer.
1912.
Jan. 12th. Case tried and submitted.
Feb. 29th. Filed opinion.
Apr. 3rd. Filed judgment.
Apr. 13th. Filed petition for writ of error, order allowing writ of error, assignment of errors, citation, bond.
Sept. 27. Filed Writ of Error.

2 *Petition for Writ of Error.*

District Court of the United States, Southern District of New York.

CHARLES E. HAMILTON, as Receiver of Evans, Johnson, Sloane Co., against
ARTHUR L. SELIG.

The defendant, Arthur L. Selig, respectfully petitions this court and alleges:

That on or about the 28th day of May, 1906, a petition was filed by a creditor in the District Court of the County of Ramsey, of the State of Minnesota against the Evans, Johnson, Sloane Co., a corporation formed under the laws of the State of Minnesota and doing business therein; that the purpose of said petition was to cause a receiver of said corporation to be appointed who should cause the assets and liabilities of said corporation to be ascertained and who should cause an assessment to be made against persons liable as stockholders of said corporation, according to the laws of the State of Minnesota.

That said petition alleged that your petitioner had, at some time previous, held 50 shares of the stock of said corporation and had transferred the same to avoid liability to creditors of said corporation.

That such proceedings were had thereon that a receiver of said corporation was appointed, and upon the petition of said
3 receiver an order was entered in said court on Sept. 4, 1906, making an assessment of one hundred dollars on each and every share of the capital stock of said corporation and upon and

against the persons or parties liable as stockholders of said corporation.

That said petition of the receiver also alleged that your petitioner had at some time previous, held 50 shares of the stock of said corporation and had transferred the same to avoid liability to creditors of said corporation.

That thereafter and on April 23, 1907, an order was entered in said court allowing certain claims filed against said corporation, and stating the date when each of said claims became due.

That your petitioner was at all times previously mentioned and now is a citizen and resident of the State of New York and was not served in any of said proceedings nor did he appear therein.

That thereafter the plaintiff as receiver of said Evans, Johnson, Sloane Co. brought the present action to recover the amount of the assessment made in the Court of Minnesota, and that such proceedings were had thereon that on the 3rd day of April, 1912, judgment was rendered herein that the plaintiff recover of the defendant $6,417.80.

That in rendering said judgment this court, among other matters, necessarily held and decided that the defendant in this action was bound and concluded by the judgment roll of the proceedings in the District Court of Minnesota, in all respects except as to the
4 issue whether the defendant ever was a stockholder of said corporation; and that the defendant was so bound and concluded with respect to the date when the several claims against said corporation arose; and that the defendant was so bound and concluded with respect to the amount of debts if any for which the defendant was liable; and that the defendant was so bound and concluded with respect to the amount of debts and the amount of stock which should form the basis of an assessment as to him.

That these matters were all so decided and held against the contention of the defendant, and involved questions of the construction of the Constitution of the United States as raised by the defendant.

That your petitioner, the defendant, is informed by his attorneys and believes and respectfully represents that manifest error was committed by the said final judgment entered herein on the 3rd day of April, 1912, and considering himself aggrieved prays for an order granting an appeal from said final judgment, to the Supreme Court of the United States as authorized by Section 5 of the Act of Congress of the United States, approved March 3rd, 1891, and the re-enactments and amendments thereof, and prays this honorable court that said appeal be allowed upon all the questions and matters of law and exceptions contained in the record and minutes of this action, and that a transcript of the entire record, proceedings and papers upon which said judgment was entered may be sent
5 duly certified to the Supreme Court of the United States.

JAMES, SCHELL & ELKUS,
Attorneys for Defendant.

The foregoing petition for an appeal to the Supreme Court of the United States is hereby allowed.

JULIUS W. MAYER,
District Judge.

(Endorsed:) U. S. District Court, S. D. of N. Y., Filed Apr. 13, 1912.

6 *Order Allowing Writ of Error.*

District Court of the United States, Southern District of New York.

CHARLES E. HAMILTON, as Receiver of Evans, Johnson, Sloane Co.,
against
ARTHUR L. SELIG.

Judgment having been rendered herein by the plaintiff for the sum of $6,417.80, and entered on the 3rd day of April, 1912; and the defendant having prayed an appeal to the Supreme Court of the United States, on the ground that certain matters involving the construction of the Constitution of the United States are herein involved, and there being involved in this case certain questions of the construction of the Constitution of the United States as appear from the record and trial minutes, it is now

Ordered that the appeal be allowed upon all questions arising herein, and it is further

Ordered that the entire record proceedings, papers and trial minutes upon which said final judgment was entered be sent duly certified to the United States Supreme Court.

LEARNED HAND,
District Judge.

Endorsed: U. S. District Court, S. D. of N. Y., Filed Apr. 13, 1912.

7 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the District Court of the United States for the Southern District of New York, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the District Court, before you, or some of you, between Charles E. Hamilton, as Receiver of Evans, Johnson, Sloane Co., against Arthur L. Selig, a manifest error hath happened, to the great damage of the said Arthur L. Selig, plaintiff-in-error, as is said and appears by his complaint, We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, Do Command You, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Judges of the United States Supreme Court, at the City of Washington, D. C., together with this writ, so that you have the same at the said place, before the Judges aforesaid, on the fourteenth day of October, 1912,

that the record and proceedings aforesaid being inspected, the said Judges of the United States Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 29th day of September, in the year of our Lord one thousand nine hundred and twelve, and of the Independence of the United States the one hundred and thirty-seventh.

[Seal District Court of the United States, Southern District of N. Y.]

[L. S.] THOS. ALEXANDER,
Clerk of the District Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is here allowed.
JULIUS W. MAYER,
U. S. District Judge.

8 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Thomas Alexander, Clerk of the District Court of the United States of America, for the Southern District of New York, in the Second Circuit, by virtue of the foregoing Writ of Error, and in obedience thereto, do hereby certify, that the pages numbered from one to 303 inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the cause of Arthur L. Selig, Plaintiff in Error, against Charles E. Hamilton, as Receiver of Evans, Johnson, Sloane Company, Defendant in Error, as the same remain of record and on file in said office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 10th day of October, in the year of our Lord one thousand nine hundred and twelve, and of the Independence of the United States the one hundred and thirty-seventh.

[Seal District Court of the United States, Southern District of N. Y.]

THOS. ALEXANDER, *Clerk.*

[Endorsed:] Law 4/205. L. 4—205. Supreme Court of the United States. Arthur L. Selig, Plaintiff in Error, vs. Charles E. Hamilton, as Receiver of Evans, Johnson, Sloane Co., Defendant in Error. 10. Writ of Error. U. S. District Court. Sep. 27, 1912. — M. S. D. of N. Y. Service of a copy of the within Writ of Error is hereby admitted this 27th day of September, 1912. John J. Clark, Attorney for Defendant in Error.

9

Summons.

UNITED STATES CIRCUIT COURT,
Southern District of New York:

CHARLES E. HAMILTON, as Receiver of Evans, Johnson, Sloane Co.,
Plaintiff,
against
ARTHUR L. SELIG, Defendant.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, at the Borough of Manhattan in the City of New York, this 29th day of November, in the year one thousand nine hundred and nine.

JOHN A. SHIELDS, *Clerk.*

H. V. RUTHERFORD,
Plaintiff's Attorney,
Office & P. O. Address,
42 *Broadway, Borough of Manhattan, New York City.*

10

Complaint.

Circuit Court of the United States, Southern District of New York.

In Law.

CHARLES E. HAMILTON, as Receiver of Evans, Johnson, Sloane Company, a Corporation, Plaintiff,
vs.
ARTHUR L. SELIG, Defendant.

Complaint.

And now comes said plaintiff, the said Charles E. Hamilton, as receiver of Evans, Johnson, Sloane Company, and for his complaint in the above entitled action respectfully represents to the Court and alleges:

1. That said plaintiff is, and during all times hereinafter mentioned was a resident and citizen of the United States and of the State of Minnesota, residing in St. Paul, Ramsey County, in the State of Minnesota.

That said above named defendant is and during all the times hereinafter mentioned was a resident and citizen of the United States and

of the State of New York, residing in the Borough of Manhattan and City and County of New York.

11 2. That on or about the 19th day of April, 1902, said Evans, Johnson, Sloane Co. was duly organized and incorporated in said State of Minnesota and under and pursuant to the provisions of the constitution and the laws of the said State of Minnesota; that ever since said date said corporation has continued to be and now is a body corporate, organized, created and existing under and by virtue of the constitution and the laws of said State; and that said corporation is, and during all of said times has been, a citizen and resident of the State of Minnesota.

That said corporation was so organized and created under the name of Evans, Munzer, Pickering Company, by which name said corporation was known until about the 10th day of May, 1904, when the name of said corporation was duly changed to Evans, Johnson, Sloane Company, under which last mentioned name said corporation continued to transact its business and by which name it has ever since been and now is generally known.

3. That the articles of incorporation of said Evans, Johnson, Sloane Company provided that the object for which said corporation was formed, and the general nature of its business, was and is to buy, sell, trade, manufacture and deal in goods, wares and merchandise of every kind and nature, and that after its incorporation, as aforesaid, said corporation engaged in and carried on in said State of Minnesota all the classes of business authorized by its said articles of incorporation, and that said articles of incorporation have never been in any way altered or amended or modified except for the purpose and to the extent of changing the name of said corporation, as aforesaid, and the number of its directors to five.

That the capital stock of said corporation, as provided and authorized by its articles of incorporation, was and is the sum of Two Hundred and Fifty Thousand Dollars ($250,000.00), divided into twenty-five hundred (2500) shares of the par value of One Hundred Dollars ($100.00) each; that the said stock is divided into two classes, denominated as preferred and common, and that the amount of preferred stock so authorized was the sum of One Hundred Thousand Dollars ($100,000.00), or one thousand (1,000) shares of the par value of One Hundred Dollars ($100.00) —; and the amount of said common stock so authorized was the sum of One Hundred and Fifty Thousand Dollars ($150,000.00), or fifteen hundred (1500) shares of the par value of One Hundred Dollars ($100.00) each; and that all of said stock, both preferred and common, has been issued and is now outstanding.

II.

That on the 25th day of September, 1905, and for more than eighteen (18) months prior thereto, said Evans, Johnson, Sloane Company was, ever since has been, and now is, insolvent. That on the 25th day of September, 1905, Lindeke, Warner & Sons, a corporation, W. E. Mayhew and Simon Lifpitz, as creditors to said Evans, Johnson, Sloane Co., under and pursuant to the act of Congress of

1898, known as the National Bankruptcy Act, and the amendments thereto, made and caused to be duly filed in the United States District Court of the District of Minnesota, their petition, as such creditors, alleging, among other things, that said insolvent corporation was insolvent and had committed an act of bankruptcy on the 19th of August, 1905, by then making a general assignment and transfer of all of its property, and praying that said corporation be adjudged a bankrupt.

12 5. That said petition, with a writ of subpœna duly issued out of said United States District Court, was duly served upon said corporation, and said Court duly acquired jurisdiction over the parties to and the subject matter of said bankruptcy proceedings; and thereupon such further proceedings were duly had in said matter, under said petition, that on the 23d day of October, 1905, said United States District Court duly made its order and rendered its judgment in said matter adjudging said Company a bankrupt; and thereafter such other and further proceedings were duly had in said matter that on the 13th day of November, 1905, said Court duly made and filed its order therein appointing Albert W. Lindeke, Norman Fetter and William E. Muse trustees in bankruptcy of said bankrupt corporation; and immediately thereupon said trustees duly qualified, took possession of all the property and assets of said corporation, and entered upon the discharge of their duties as such trustees. That said corporation duly made and filed in said bankruptcy proceedings its petition therein asking for a discharge, and thereafter such further proceedings were duly had in said bankruptcy proceedings, upon due notice, that on the 24th day of February, 1906, said bankruptcy court duly made and entered its order and judgment therein discharging said bankrupt corporation.

6. That long prior to the date of the filing of said petition in bankruptcy, as aforesaid, said corporation was, ever since has been, and now is, indebted to divers persons, firms and corporations for goods sold and delivered to said corporation in its said business in the aggregate amount of Two Hundred and Fifty Thousand Dollars ($250,000.00), all of which indebtedness, including the hereinafter mentioned indebtedness of said corporation to said Marshall Field & Company, was duly filed and allowed in said bankruptcy proceedings as hereinafter set forth.

That said trustees in bankruptcy duly took possession of all the property and assets of said insolvent corporation and converted the same and all thereof into cash, and that the total amount received therefor was the sum of Sixty-six Thousand Four Hundred and Sixty-one Dollars ($66,461.00), out of which the costs and expenses of said bankruptcy proceedings have been paid, and the balance thereof amounting to Fifty Thousand Dollars ($50,000.00) has been duly distributed among and paid to the said creditors of said corporation as dividends upon their said claims. That said trustees in bankruptcy have fully discharged their trust, that said bankruptcy proceedings have been closed, and that the total amount paid in said bankruptcy proceedings in dividends to the creditors of said corporation upon their said claims is twenty and 45-100 cents

(20 45-100) on the dollar, and that said trustees in bankruptcy have been duly discharged, and their bond and the sureties therein released.

III.

7. That Marshall Field & Company is and during all the times hereinafter stated has been a corporation, duly organized, created and existing under and by virtue of the laws of the State of Illinois. That heretofore and between the 8th day of May and the 15th day of July, 1904, said Marshall Field & Company, at the special instance and request of said Evans, Johnson, Sloane Company, sold and delivered to said Evans, Johnson, Sloane Company, goods, wares and merchandise, worth and of the value of Three Thousand and Sixty-five and 50-100 Dollars ($3,065.50), which said sum said defendant promised and agreed to pay therefor. That said
13 Marshall Field & Company duly filed its said claim for said goods in said bankruptcy proceedings, and the same was duly allowed, and that although long since due, said claim has not been paid, nor any part thereof, except the sum of six hundred and twenty-five and 89/100 ($625.89) paid by said trustee in said bankruptcy proceedings as dividends upon said claim.

8. That after the filing of said petition in said bankruptcy proceedings, and said Evans, Johnson, Sloane Company had been duly adjudged a bankrupt, as aforesaid, and after said bankruptcy court had duly made and filed its order therein duly discharging said bankrupt corporation, as hereinbefore set forth, and on or about the 28th day of May, 1906, at Ramsey County, Minnesota, said Marshall Field & Company as such creditors of said Evans, Johnson, Sloane Company, duly commenced in the District Court in and for the County of Ramsey and State of Minnesota, which Court was then and there a court of record and general jurisdiction, an action against said Evans, Johnson, Sloane Company under and pursuant to the provisions of Chapter 76 of the General Statutes of the State of Minnesota, and the acts amendatory thereof and supplementary thereto, on behalf of itself and all the other creditors of said corporation for the sequestration of the stock of said Evans, Johnson, Sloane Company and such property and effects, if any, as said insolvent corporation might acquire subsequent to the commencement of said action, and all property and estate, if any of said insolvent corporation not taken and administered in said bankruptcy proceedings, and of the rights of action to collect for the benefit of the creditors of said corporation the constitutional or superadded liability of its stockholders, and for the appointment of a
14 receiver of said corporation therefor to wind up said corporation and to enforce the said superadded liability by means of a ratable assessment adjudged and ordered under and pursuant to Chapter 272 of the General Laws of Minnesota for the year 1899, which superadded or constitutional liability was provided by the constitution and laws of the State of Minnesota, as hereinafter set forth.

9. That said Evans, Johnson, Sloane Company was duly and personally served with summons and due process in said action and

on or about the 13th day of June, 1906, duly appeared in said action by its duly authorized attorneys, and said Court duly acquired jurisdiction over the parties to and the subject matter of said action.

That thereafter such proceedings were duly had in said action that on the 25th day of June, 1906, an order and judgment was duly given, rendered and entered in and by said District Court in and for said Ramsey County in said action adjudging said corporation insolvent and ordering and adjudging that such property, if any, acquired by said insolvent corporation subsequent to the commencement of said action, and such property and estate of said corporation, if any, not taken and administered in said bankruptcy proceedings, and the rights of action to enforce payment of the superadded or constitutional liability of the stockholders of said corporation to its creditors, be sequestered, and sequestering the same, and adjudging that a receiver of said corporation be appointed therefor to collect and enforce the constitutional or superadded liability of the stockholders of said corporation by means of a ratable assessment adjudged and ordered under and pursuant to said Chapter 272 of the General Laws of Minnesota for 1899. That said judgment has never been appealed from, vacated or set aside, but remains in full force and effect.

10. That on the 25th day of June, 1906, this plaintiff, the said Charles E. Hamilton, was by the last above mentioned order and judgment of said District Court of Ramsey County, in said last above mentioned action, duly appointed receiver of said insolvent corporation and of such property and estate, if any, of said corporation as was not taken and administered in said bankruptcy (*proceedings*) proceedings, and of all the stock of said corporation, and the rights of action to enforce payment of the superadded or constitutional liability of the stockholders of said corporation to its creditors, with the usual powers and directions, and with all the powers and authority of a receiver under chapter 58 of the Revised Laws of Minnesota, and all the power of a receiver in equity, and with full power and authority to convert into cash such property of said insolvent corporation, if any, as might come into his hands as such receiver, and to take the proper and necessary steps to collect and enforce payment of the said superadded or constitutional liability of the stockholders of said corporation for its debts by means of the ratable assessments ordered by said District Court of said Ramsey County, as hereinafter more fully set forth, and to bring action against every person or party liable as stockholder of said corporation, and so assessed and failing to pay, wherever he, or any of his property subject to process in such action, is found, whether in the State of Minnesota, or elsewhere, with power to prosecute appeals or sue out writs of error in any such suits or actions.

That this plaintiff afterwards gave the bond required by him as such receiver, which said bond was duly approved by one of the judges of said court and duly filed in said court, and that this plaintiff duly qualified as such receiver, and entered upon and has ever since been and now is acting in the discharge of his duties as such receiver.

IV.

11. That thereafter and on the 28th day of June, 1906, an order of said District Court of Ramsey County was made and entered in said court in said action, authorizing and requiring the creditors of said insolvent corporation to become parties to said action and to appear and exhibit therein their claims against said corporation within the time specified in said order, to-wit, on or before six months from and after the date of the first publication thereof. That after the entry of said order the said order was duly published as required therein; and that within the time therein limited, and in the manner therein prescribed, the creditors of said corporation have become parties to said action as intervenors therein, and duly exhibited therein their claims and demands against said corporation, and proved the same, and after hearing duly had in such action, said claims of such creditors, including the said claim of said Marshall Field & Co., were by an order and judgment of said Court duly rendered and entered in said action on the 23d day of April, 1907, duly allowed to the aggregate amount of One Hundred and Forty-six Thousand One Hundred and Sixty-nine and 59-100 Dollars ($146,169.59), and said last named sum now remains unpaid. That more than 85 per cent in number and amount of the said claims so proven and allowed are of creditors who during all of the times herein mentioned resided, and still reside, outside the limits of said State of Minnesota.

12. That all the property and assets which said insolvent corporation had or acquired prior to the commencement of said action in which this receiver was appointed, were taken possession of by said trustees in bankruptcy and by them converted into cash and distributed in said bankruptcy proceedings, as aforesaid; and that said corporation has not, since the filing of said petition in bankruptcy, or since the commencement of said action in which this receiver was appointed, acquired or had any property or assets whatever, that all the property and assets of said corporation have been exhausted, and that no property or assets whatever have come into the hands
17 of said receiver, except the said superadded or constitutional liability of the stockholders of said corporation for its debts.

13. That at the time of the organization and incorporation of said Evans, Johnson, Sloane Company, it was, ever since has been and now is provided in and by the constitution and laws of the State of Minnesota as construed by the Court of last resort of said state that each and every stockholder of said corporation shall be liable for its indebtedness, in case the property and assets of said corporation are not sufficient to liquidate such indebtedness, to an amount equal to the par value of the stock held or owned by each stockholder; and that each stockholder upon becoming such, assumed and agreed, in case of such deficiency, to pay and contribute for the equal benefit of the creditors of such corporation, such amount, not exceeding the par value of his stock, as might be required to make up such deficiency.

That Section 3 of Article 10 of the Constitution of Minnesota is as follows:

"Each stockholder in any corporation, excepting those organized for the purpose of carrying on any kind of manufacturing or mechanical business, shall be liable to the amount of stock held or owned by him."

That as construed by the Supreme Court, or Court of last resort of said State of Minnesota, a corporation is not a manufacturing corporation within the meaning of the excepting clause of said Section 3 unless it appears from its articles of incorporation that its authorized business is thereby limited exclusively to manufacturing. That said Evans, Johnson, Sloane Company is not a manufacturing corporation and that its stockholders are not within the exception to the constitutional provision imposing the said superadded liability on the stockholders of said corporation.

18 14. That on or about the 23rd day of April, 1902, at Hennepin County, Minnesota, said defendant, Arthur L. Selig, subscribed for, took and became the owner and holder of fifty (50) preferred shares of the capital stock of said Minnesota corporation, which were then and there issued and delivered to said defendant. That said fifty (50) shares were so issued and delivered to said defendant in a certificate of said corporation, dated April 23rd, 1902, and known as certificate No. 6 for said fifty (50) shares.

15. That said certificate was so issued to said defendant prior to the change of name of said corporation and in and under its former name of Evans, Munzer, Pickering and Company, and although said corporation changed its name, as aforesaid, and as hereinafter set forth, such change has never been made to appear on said certificate or on any of the certificates representing the capital stock of said corporation.

That at the time of the issue and delivery of said fifty (50) shares and certificate No. 6 to said defendant, a record thereof was duly made and entered on the stock book of said corporation, showing the number of said certificate to date of issue, the number of shares represented by such certificate, and that said fifty (50) shares and said certificate were issued to said defendant.

16. That on or about the 5th day of September, 1904, and when said Evans, Johnson, Sloane Company was in an unsound financial condition, said defendant, with notice of the unsound financial condition of said corporation, because of apprehension that said corporation would fail, and for the purpose of concealing his ownership of said fifty (50) shares represented by said certificate No. 6, and avoiding and evading his liability as the owner and holder thereof,

19 signed the blank assignment on the back of said certificate No. 6, and sent the said certificate to the officers of said corporation, with instructions to transfer said fifty (50) shares to one Max Mayer on the books of said corporation, and that accordingly said corporation caused an entry of said pretended transfer to said Mayer to be made on the books of the corporation. And on information and belief said plaintiff alleges that said Max Mayer never paid any sum or amount, or anything, for said stock; that said pretended assignment and transfer was without consideration; that said Max Mayer was at the time thereof, and was known by said defend-

ants to be, a person wholly without means and wholly incapable of paying the liability on said stock; that said pretended assignment was not bona fide, but was made with the understanding and agreement by and between said defendant and said Max Mayer that said Max Mayer should not thereby acquire any beneficial interest in said stock or any part thereof, but that said defendant should remain the owner of the entire beneficial interest therein, and that said assignment and transfer, and each of them, are fraudulent and void as to said receiver and the creditors of said corporation and that said defendant has ever remained and now is the owner of said stock so subscribed for and taken by him.

17. That more than Forty Thousand Dollars ($40,000.00) of said indebtedness of said Evans, Johnson, Sloane Company, allowed as aforesaid, in said action in said District Court of Ramsey County, arose and was incurred and created prior to September 5th, 1904, the date of said pretended assignment; that the collectible or solvent liability will not be sufficient to pay said allowed indebtedness, or any part of it, in full; and that during all of the times above stated, it was, ever since has been and now is provided by the statutes and laws of Minnesota as follows:

Section 2599, Chap. 34, General Statutes of Minnesota for 1894.

"The transfer of shares is not valid, except as between the
20 parties thereto, until it is regularly entered on the books of the company, so as to show the names of the persons by whom transferred, the numbers or other designation of the shares, and the date of the transfer; but such transfer shall not in any way exempt the person making such transfer from any liabilities of said corporation which were created prior to such transfer."

This provision is re-enacted and perpetuated in and by Section 2864 of Chapter 58 of the Revised Laws of Minnesota for 1905.

That said Supreme Court, or Court of last resort of the State of Minnesota, in construing said section 2599, has decided and determined, that a stockholder of a corporation cannot affect or avoid his constitutional liability for the prior debts of the corporation by a bona fide sale of his stock to a solvent party and a transfer thereof on the books of the corporation.

21 VI.

18. That at the time of the incorporation of said Evans, Johnson, Sloane Co. as aforesaid it was, ever since has been and now is provided by the laws of Minnesota as follows:

Chapter 272 of the General Laws of Minnesota for 1899.

"An act to provide for the better enforcement of the liability of stockholders of corporations.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. Whenever any corporation created or existing by or under the laws of the State of Minnesota, whose stockholders or any of them are liable to it or to its creditors, or for the benefit of its

creditors, upon or on account of any liability for or upon or growing out of, or in respect to the stock or shares at any time held or owned by such stockholders, respectively, whether under or by virtue of the constitution and laws of said State of Minnesota, or any statute of said state, or otherwise, has heretofore made or shall hereafter make an assignment for the benefit of its creditors under the insolvency laws of this state; or whenever a receiver for any such corporation has heretofore been or shall hereafter be appointed by any district court of this state, whether under or pursuant to any of the provisions of chapter seventy-six (76) of the General Statutes of eighteen hundred and ninety-four (1894), of Minnesota and the acts amendatory thereof, or under or pursuant to any other statute of this state or under the general equity powers and practice of such court: the district court appointing such receiver, and having jurisdiction of the matter of said assignment may proceed as in this act provided.

SEC. 2. Upon the petition of the assignee or receiver of any such corporation, or of any creditor of such corporation who has filed his claim in such assignment or receivership proceedings, the said district court shall by order appoint a time for hearing not less than thirty (30) nor more than sixty (60) days from the time of filing said petition with the clerk of said court, and shall direct such notice of such hearing to be given by the party presenting said petition, by publication or otherwise, as the court in its discretion may deem proper; but if said petition be filed by a creditor, other than the assignee or receiver of said corporation, the court shall direct that notice of such hearing be personally served on such assignee or receiver.

SEC. 3. At such hearing the court shall consider such proofs by affidavit or otherwise, as may then be offered by the assignee or receiver, or by any creditor or officer or stockholder of said corporation who may appear in person or by attorney, as to the probable indebtedness of said corporation and the expenses of said assignment or receivership, and the probable amount of assets available for the payment of such indebtedness and expenses; and also as to what parties are or may be liable as stockholders of said corporation and the nature and extent of such liability. And if it appear to the satisfaction of the court that the ordinary assets of said corporation, or such amount as may be realized therefrom within a reasonable time, will probably be insufficient to pay and discharge in full and without delay its indebtedness and the expenses of such assignment or receivership, and that it is necessary or proper that resort be had to such liability of its stockholders; the said court shall thereupon by order direct and levy a ratable assessment upon all parties liable as stockholders, or upon or on account of any stock or shares of said corporation, for such amount, proportion or percentage of the liability upon or on account of each share of said stock as the court in its discretion may deem proper (taking into account the probable solvency or insolvency of stockholders and the probable expenses of collecting the assessment); and shall direct the payment of the amount so assessed against each share of said stock to the assignee or receiver within such time thereafter as said court may specify in said order.

SEC. 4. Said order shall direct the assignee or receiver to proceed to collect the amount so assessed against each share of said stock from the parties liable therefor; and shall direct and authorize said assignee or receiver, in case of the failure of any party liable upon or on account of any share or shares of said stock to so pay the amount so assessed against the same within the time specified in said order, to prosecute actions against each and every such party so failing to pay the same, wherever such party may be found, whether in this state or elsewhere.

SEC. 5. Said order and the assessment thereby levied shall be conclusive upon and against all parties liable upon or on account of any stock or shares of said corporation, whether appearing or represented at said hearing or having notice thereof or not, as to all matters relating to the amount of and the propriety of and necessity for the said assessment. This provision shall also apply to any subsequent assessment levied by said court as hereinafter provided.

22

SEC. 6. It shall be the duty of such assignee or receiver to, and he may, immediately after the expiration of the time specified in said order for the payment of the amount so assessed by the parties liable therefor, institute and maintain an action or actions against any and every party liable upon or on account of any share or shares of such stock who has failed to pay the amount so assessed against the same, for the amount for which such party is liable. Said actions may be maintained against each stockholder, severally, in this state or in any other state or country where such stockholder, or any property subject to attachment, garnishment or other process in an action against such stockholder, may be found. But if said assignee or receiver shall in good faith believe any stockholder so liable to be insolvent, or that the expense of prosecuting such action against such stockholder will be so great that it will be of disadvantage to the estate and the interest of creditors to prosecute the same, said assignee or receiver shall so report to said court; and shall not be required to institute or prosecute any such action unless specifically directed so to do by said court. And in such case said court shall not require said receiver to institute or maintain such action unless said court shall have reasonable cause to believe that the result of such action will be of advantage to the estate and creditors of said corporation; except as hereinafter provided.

SEC. 7. In any case where the court shall have levied an assessment against stockholders as in this act provided, for a less amount or proportion than the full amount of the liability upon or on account of the stock of said corporation, and it shall thereafter be made to appear to the satisfaction of said court, by petition or otherwise, and upon hearing as hereinbefore provided, that by reason of the insolvency of stockholders, or for any other cause, it is necessary or desirable or for the interest of creditors that another and further assessment upon or against said stock be levied, the court shall by order direct and levy a further and additional assessment for such amount, proportion or percentage of the liability upon or on account of each share of said stock, as said court in its discretion may deem

proper; and in the same manner may levy further and additional assessments upon said stockholders, and against said stock, not exceeding in the aggregate the maximum amount of liability upon or on account of the stock of said corporation.

SEC. 8. All the provisions of this act shall apply to any such assessment levied by said court after the first, and to the proceedings preliminary to levying and directing the same, to the same extent and with the same force and effect as to the first assessment so levied under the provisions of this act.

SEC. 9. Where two (2) or more such assessments are levied or directed, the assignee or receiver may join the causes of action, accruing against any stockholder upon any two or more such assessments in a single action against such stockholder, or he may, at his discretion, unless otherwise directed by the court, maintain a separate action against each stockholder for each successive assessment levied or directed.

SEC. 10. If said assignee or receiver shall fail to institute and prosecute an action against any stockholder who has failed to pay any such assessment or assessments, or to prosecute such an action with diligence after instituting the same, any stockholder or stockholders who have paid in full the amount of any such assessments, or any creditor or creditors of said corporation, may petition said court to require said assignee or receiver to prosecute such action against such stockholders so failing to pay as aforesaid, or to permit the party or parties so petitioning to institute and maintain or to continue the prosecution of such action in the name of said assignee or receiver, and for the benefit of said estate, and if said party or parties so petitioning shall furnish security or indemnity for costs and expenses as the court may direct, the said court shall thereupon require said assignee, or receiver, to forthwith prosecute such action, or in its discretion may permit such party or parties so petitioning to institute and prosecute or continue the prosecution of the same as aforesaid.

SEC. 11. If, after the payment of all the expenses of such assignment or receivership and all indebtedness of and claims against said corporation proved or allowed in said proceedings, there shall remain any surplus money or property in the hands of the
23 assignee or receiver, the same shall be distributed, under the direction of said court and in such manner as may be just and equitable, among those stockholders who have paid the assessments levied against their stock as herein provided. And any stockholder who has so paid such assessments levied against his stock shall, in addition to any remedy herein provided for, be entitled to enforce contribution from stockholders who have not paid such assessments, and for that purpose may be subrogated to the rights of the creditors of said corporation against such defaulting stockholders, in such manner and to such extent as may be just and equitable.

SEC. 12. Whenever, in a proceeding heretofore instituted under the then existing laws of this state to enforce the liability of stockholders of any such corporation, a portion of the amount for which the stockholders of such corporation are liable has been collected, but

the amount so collected is insufficient to pay and discharge claims against said corporation in full, and there remain stockholders who were not made parties to such proceedings, then, notwithstanding final judgment may have been rendered and entered in said proceeding against those stockholders who were made parties thereto, the district court having jurisdiction may proceed as in this act provided and may levy assessments in the manner herein prescribed to such extent as may be necessary to satisfy and discharge in full all claims against said corporation and all expenses of such proceedings. And the assignee or receiver, or the receiver appointed by said court in such proceedings, may institute and maintain actions to recover the amount of such assessments in the same manner, with the same effect, as in the case of an assessment levied as provided in the preceding sections of this act, and all the provisions of this act shall apply to any stockholder who has paid, or from whom has been collected, in the course of such prior proceeding, any portion of the amount for which he is liable for or on account of the stock held or owned by him, shall be credited upon any assessment levied against said stock as in this section provided with the full amount so paid by or collected from him.

SEC. 13. This act shall not apply to any action now pending to which stockholders of such corporations have been made parties under the provisions of chapter seventy-six (76), General Statutes of eighteen hundred and ninety-four (1894), and acts amendatory thereto, and in which the issue as to who are stockholders has heretofore been tried and determined by the courts; except that after final judgment in such action, if a proper case exists under the provisions of section twelve (12) of this act, the court and parties may proceed in the manner prescribed by said section twelve (12).

SEC. 14. All acts and parts of acts inconsistent herewith are hereby repealed.

SEC. 15. This act shall take effect and be in force from and after its passage.

Approved April 18, 1899."

That the provisions of said Chapter 272 General Laws of Minnesota for the year 1899, as hereinbefore set forth, were substantially all re-enacted and perpetuated in and by Sections 3122 to 3190, inclusive, of Chapter 58 of the Revised Laws of Minnesota, which were enacted April 18th, 1905, to take effect March 1st, 1906.

VII.

19. That when said Evans, Johnson, Sloane Co. was organized and incorporated, as before said, and when said defendant became the owner of said fifty shares of the stock of said corporation, as aforesaid, the provisions of the constitution and of the laws of the State of Minnesota hereinbefore set forth, were all in full force and effect and became a part of defendant'- contract of subscribing for, acquiring, and becoming the owner of said shares of stock; and that said defendant in and by subscribing for, acquiring owning and holding said fifty shares of said stock of said corpora-

tion, as aforesaid, for a valuable consideration contracted, promised and agreed: (1) that he would be and remain responsible and liable, with the other stockholders of said
24 corporation, for the afore-aid and hereinafter mentioned indebtedness of said corporation to its creditors, together with the reasonable costs and expenses of collecting the stockholders' liability, and for all debts of said corporation, to the amount of the par value of his said fifty shares of said stock, being the sum and amount of $5,000.00; (2) that the assessment made pursuant to the aforesaid laws, and as hereinafter more particularly set forth, upon said defendant, and upon all parties liable as stockholders of said corporation, on account of this said stock, should be conclusive and binding upon said defendant and all parties so liable, as to all matters relating to the amount and propriety of and the necessity for such assessment; (3) that in the aforesaid action for the sequestration of said stockholders' liability fund and the appointment of this plaintiff as receiver, and in the assessment proceedings had therein, as hereinafter set forth, the said District Court of Ramsey County by obtaining jurisdiction over said corporation should thereby be deemed and adjudged to obtain and have in said action and proceedings full jurisdiction over said defendant and the other stockholders of said insolvent corporation by virtue of their membership in said corporation, so far as is necessary for determination of the question of the amount of and necessity for such assessment and of all the questions specified in said section three of Chapter 272 aforesaid, and (4) that said defendant would, in common with the other stockholders of said insolvent corporation, pay this plaintiff said liability as determined and adjudged by said order of assessment, and that, if he did not so pay the same within the time provided in such order, said receiver should have the power and authority, and it should be his duty as receiver of said corporation, as aforesaid, to bring and prosecute this action against said defendant to enforce payment by him of the amount of his said liability as so assessed upon his said stock.

20. That under the constitution and laws of the United States the aforesaid order and decree of assessment, and the aforesaid order and decree appointing plaintiff as receiver of said corporation, and the said statutes and proceedings in Minnesota upon which the same are based, are entitled to be given in every other state the same credit and effect which they have in Minnesota; that the Supreme Court of Minnesota, which is its court of last resort, and the Supreme Court of the United States, in construing said Chapter 272, General Laws of 1899, have decided and determined, and it is the law, that said act is constitutional and not in violation of any provisions of the constitution of the United States or of the Constitution of Minnesota; that by acquiring jurisdiction over the corporation in proceedings under said act, the Minnesota Court thus acquires jurisdiction over absent and non-resident stockholders, so far as is necessary for a determination of all questions specified in said Section 3 of said act; that the determination or judgment of the Court ordering such assessment and appointing a receiver is

conclusive and binding upon stockholders who are not before the Court otherwise than by virtue of their membership in the corporation; that due process of law is not denied a stockholder of a Minnesota corporation by said act because stockholders need not be served with process in the action in which the assessment is ordered; and that the Supreme Court of the United States in construing said act has further held, decided and determined, and it is the law, that the receiver appointed under said act thereby becomes a quasi assignee and representative of the creditors and as such vested with authority to bring and maintain actions to enforce payment of such assessment in any jurisdiction where such stockholders may be found, whether in the State of Minnesota or elsewhere.

21. That on the 6th day of July, 1906, this plaintiff made and caused to be filed with and presented to said District Court of Ramsey County in said action in which this plaintiff was appointed receiver of said corporation, as aforesaid pursuant to and in accordance with the law in such case made and provided, a petition by this plaintiff praying, among other things, that said Court order and direct and levy a ratable assessment upon each share of the said stock of said company, and against each of the stockholders and persons, firms and corporations liable on account of said stock for such amount, or percentage of said constitutional liability of each and every stockholder of said corporation for its debts as the court shall deem proper after hearing, as provided by law, pursuant to the provisions of said Chapter 272 of the General Laws of Minnesota for the year 1899, as hereinbefore set forth; and praying that said Court determine, designate and appoint a time and place for hearing said petition and application, and direct such notices of said hearing to be given as said Court should deem proper.

22. That on the said 6th day of July, 1906, said District Court of Ramsey County, duly made and entered in said action its order for hearing upon plaintiff's said petition in pursuance of the provisions of said Ch. 272, General Laws of Minnesota for the year 1899, that notice designating and appointing the time and place for hearing upon said petition was given in and made a part of said order for hearing, and that notice of said order and hearing was duly given in the manner provided in said order. That said order and notice was duly published, that copies of said order and notice were duly mailed, as therein directed, and that a copy of said order and notice was duly mailed to said defendant more than thirty days prior to the first day of September, 1906, the date of hearing upon said petition, as specified in said order. That on the first day of September, 1906, said matter duly came on for hearing and was with the consent of all parties duly adjourned to the 4th day of September, 1906, when said matter duly came on for final hearing, and at which time evidence was introduced by said receiver, and the matter was then duly argued by counsel and duly heard and considered by the Court, and thereafter and on the 4th day of September, 1906, said District Court of Ramsey County duly made and entered its order of assessment in said action in the following words and figures, to-wit:

23. STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, A CORPORATION, Defendant.

The above entitled action and matter duly came on to be heard before said Court on the 1st day of September, 1906, pursuant to an order of said Court made and dated July 6, 1906, and duly filed and entered herein, upon the petition of Charles E. Hamilton, as receiver of said defendant, praying for an assessment herein by said Court upon each share of the capital stock and against those liable as stockholders of said defendant; James E. Trask and E. H. Morphy, appearing as attorneys for said receiver; J. R. Corrigan appearing for Edwin Sloane, one of the stockholders of said defendants, there being no other appearance, and was then with the consent of all parties duly continued to the 4th day of September, 1906, when said action and matter again duly came before said Court and was duly heard upon said petition, the same attorneys appearing for
26 said receiver, there being no other appearance, and proof of due service of notice of hearing upon said petition having been made, and the Court having received and duly considered all the evidence presented:

It is ordered, That an assessment equal to the par value of each share of the capital stock of said defendant, to-wit: the sum of one hundred ($100.00) dollars on each and every share of the capital stock of said defendant, be and the same is hereby assessed upon and against each and every share of said capital stock and upon and against the persons or parties liable as stockholders of said defendant for, upon or on account of such shares of stock; that each and every person or party liable as such stockholder of said defendant pay to said Charles E. Hamilton, as receiver of said defendant, at his office, in the City of St. Paul, in said Ramsey County, State of Minnesota, within thirty days after the date of this order, the sum of one hundred ($100.00) dollars for and on account of each and every share of said stock for or upon which said persons or parties are liable as stockholders of said defendant; and that said receiver forthwith proceed to collect the several amounts due from the several persons or parties liable as stockholders of said defendant under the terms of this order, and hold the amounts thus collected until the further order of the Court herein.

Ordered further, That in case any person or party liable as a stockholder of said defendant shall fail to pay the amount hereby assessed against the share or shares of stock held or owned by such stockholders, or upon or on account of which he may be liable, within the time hereinbefore specified, said receiver is hereby authorized and directed forthwith to institute and prosecute such action or actions, or other proceedings against such person or persons,

party or parties liable, in any Court having jurisdiction, whether in the State of Minnesota, or elsewhere, which said receiver may deem necessary or proper for the recovery of the amount due from such person or persons under the terms of this order.

Ordered further, That said receiver give notice of this order by mailing a copy of the same within (5) days from the date hereof to each stockholder of said defendant whose name and address is known to said receiver or his attorneys or either of them.

Dated at St. Paul, September 4th, 1906.

OSCAR HALLAM,
District Judge."

JAMES E. TRASK AND
E. H. MORPHY,
Attorneys for Receiver, St. Paul, Minn."

27 24. That said order of assessment has never been appealed from, modified, vacated or set aside; and that said Court in and by said order ordered that an assessment equal to the par value of each share of the capital stock of said corporation, to-wit: the sum of one hundred dollars ($100.00) on each and every share thereof, be and the same was thereby assessed upon and against each and every share of said capital stock, and upon and against the persons or parties liable as stockholders of said insolvent corporation, for, upon or on account of such shares of stock, that each and every person or party liable as such stockholder of said corporation pay, and was thereby ordered to pay to this plaintiff, as receiver of said company, at his office, in the City of St. Paul, in said Ramsey County, State of Minnesota, within thirty (30) days after the date of said order the sum of one hundred dollars ($100.00), for and on account of each and every share of said stock for or upon which said person or parties were liable as stockholders of said corporation, and that in and by said order of assessment this plaintiff, as such receiver, was ordered to give due notice of such order by mailing a copy of the same within five days from the date thereof to each stockholder of said corporation whose name and address was known to said receiver or to his attorneys or either of them.

That due notice of said order of assessment was duly given by this plaintiff to said defendant and the other stockholders prior to September 9, 1906, as prescribed by said order; and that said one hundred dollars ($100.00) per share, assessed as aforesaid, was and is necessary to pay the said indebtedness as proved up in said action as aforesaid.

And plaintiff alleges that by virtue of the premises, and the constitution and laws of the said State of Minnesota, said defendant became, was and is liable to pay to said plaintiff the sum of Five Thousand Dollars, together with interest thereon at the rate of six per cent per annum from and after the 4th day of October, 1906, and in consideration thereof, then and there promised said plaintiff to pay him said sum of money, at his request.

28 That during all the times herein stated, Samuel Eiseman, Samuel L. Ferber and this defendant, the said Arthur L.

Selig, were, ever since have been, and now are co-partners in business under the firm name and style of Samuel Eiseman and Company. That between the 28th day of February, 1905, and the 11th day of May, 1905, said defendant, Arthur L. Selig, together with said Samuel Eiseman and Samuel L. Ferber, as co-partners as aforesaid, sold and delivered to said Evans, Johnson, Sloane Company goods, wares and merchandise of the value of $5,378.48, and that no part thereof has ever been paid, except the sum of $1,099.90. That said defendant, Arthur L. Selig, as a member of said co-partnership, pursuant to said order requiring creditors of said corporation to present their claims, duly became a party to said action in which this plaintiff was appointed receiver, as aforesaid, and joined with his said co-partners under the said firm name of Samuel Eiseman and Company in filing their said claim for the value of said goods, and said co-partners, under their said firm name, duly filed in said action their verified complaint, setting forth their said claim and asking the judgment of the Court in said action for the amount thereof; and that said claim was by the said judgment of the Court in said action, duly allowed in the sum of $4,860.69, including interest.

29 25. That during the times herein stated, it was and is the law of Minnesota, as construed, decided and determined by said Supreme Court in said cases above referred to and set forth and other cases, that the constitutional liability of the stockholders of a Minnesota corporation is a fund for the security of all the creditors ratably, and a stockholder cannot set off against his liability to creditors an indebtedness of the corporation to such stockholder; that a receiver appointed to enforce or collect the liability of resident stockholders, also has the power to enforce payment of the liability of non-resident stockholders in any jurisdiction where they may be found; that the liability of stockholders of a Minnesota corporation is several and not joint, and that a judgment in an action in Minnesota against part of the stockholders does not have the effect of relieving others; that such action in Minnesota Courts is not the exclusive remedy, but if stockholders are not sued in the Minnesota Courts in which the principal proceedings are instituted to wind up the insolvent corporation, because that Court cannot acquire jurisdiction over them to render a personal money judgment against them, or for any other cause, the liability would be enforcible against such stockholders in an auxiliary action in any jurisdiction in which they might be found or served with process; that the liability of stockholders is not penal in its nature, but purely contractual, containing all the elements of a contract, and can be enforced as such in an action or contract; that the order or judgment in the original action, or principal action, determining the amount of the corporate debt, is binding on the stockholders, whether parties to such action or not; that the stockholders are so liable for all debts of the corporation, both those contracted before and after they became stockholders; that when a person becomes a

30 stockholder in a corporation organized under the laws of a foreign state, he contracts with reference to all the laws of

the state under which the corporation is organized, and that all such laws became a part of his contract; that in an action to enforce this liability against a stockholder in a state of which the corporation is not a resident, it is not necessary first to procure judgment against the corporation in such state, and that the capital of a corporation is the basis of its credit, that its financial standing and reputation has its source in and is founded upon its capital stock, and that every one who deals with it is presumed to do so upon the faith of that standing and reputation.

26. That during all the times herein stated, the law of Minnesota authorizing the organization and creation of corporations and the change of the name of a corporation, was and is set forth in Chapter 34 of the General Statutes of Minnesota for 1894, and the amendments thereto, and that the same, so far as it relates to changing the name of the corporation, is as follows:

"SECTION 2593. Articles of Incorporation. Filing and record. They shall organize by adopting and signing articles of incorporation, which shall be recorded in the office of the Register of Deeds in the county where the principal place of business is to be, and also in the office of the Secretary of State, in books kept for that purpose."

"SECTION 2794. Any number of persons, not less than three, who have or shall, by articles of agreement in writing, associate according to the provisions of this title, under any name assumed by them for the purpose of engaging in or carrying on the business of mining, * * * or any other lawful business, and who have or shall comply with the provisions of this title, shall with their associates, successors or assigns, constitute a body corporate and politic
31 under the name assumed by them in their articles of agreement. * * *"

That Section 2594 of said Chapter 34, as amended by Chapter 99 of the General Laws of Minnesota for 1901, provides that the articles of incorporation shall state, among other things, the name of the corporation, the general nature of its business and the principal place, if any, of the transacting of the same, the number of its directors; and that said articles of incorporation shall be published in a legal newspaper published at the capital of the state, or in the county where such corporation is organized, provided that if publication be made in a daily newspaper, two publications on successive days shall be a sufficient publication, and if the publication be made in a weekly newspaper, publication for two successive weeks therein shall be a sufficient publication.

27. That Section 3400, as amended by Chapter 13, General Laws of 1897, and 2804, of said Chapter 34, are as follows:

"Any corporation heretofore or hereafter organized under any general laws of this state may amend its articles of incorporation in any respect which might have been made part of said original articles * * * by adopting a resolution expressing such proposed amendment or renewal, by a two-thirds vote of all its members, shareholders or stockholders present and voting at any regular meeting of such corporation, or at any special meeting called for that

purpose * * * and filing and publishing such resolution in the manner provided for filing and publishing its original articles."

SECTION 2804. "Any body politic or corporate amending its original articles of association shall cause to be prepared a certificate stating the time when and the respect in which such articles were amended, which certificate shall be subscribed and sworn to by the president or other chief executive officer, and also by the Sec-
32 retary of such body politic or corporation, and shall also be filed, published and recorded in the manner provided by law for filing, recording and publication of such original articles; and thereupon such amendments shall be and become a part of the articles of such body corporate, with the same force and effect as if such amendments had been adopted as a part of such original articles."

And plaintiff alleges that the articles of incorporation of said Evans, Johnson, Sloane Company provide, among other things, that the principal place of the transaction of the business of said corporation shall be the City of Minneapolis, County of Hennepin and State of Minnesota.

That the name of said Minnesota corporation was duly changed, as aforesaid, to Evans, Johnson, Sloane Company by an amendment to its original articles of incorporation, which amendment was duly made by the adoption of a resolution specifying such change and by causing a certificate stating the time and respect in which said articles were so amended to be duly subscribed and sworn to and to be duly filed, recorded and published, proof of which publication was duly filed in the office of the Secretary of State of the State of Minnesota, and all of which was done in accordance and compliance with the laws and statutes of Minnesota; and that pursuant thereto said corporation abandoned its said original name, and as a corporation duly created and existing, as therein set forth, with the knowledge and consent of said defendant, continued in the transaction of its said business in and under the said name of Evans, Johnson, Sloane Company so adopted by said corporation and by which it has ever since been known. That in incorporating said company, the statutes of Minnesota were fully complied with.

33 28. That at the time of the organization of said Evans, Johnson, Sloane Company, as aforesaid, in April, 1902, and for the purpose of incorporating said company, as hereinbefore set forth, original articles of incorporation of said company, setting forth the nature of its business, the original name of said corporation, and containing all the other things required by statute, were duly made, signed, adopted and filed, and duly recorded in the office of the Register of Deeds of said Hennepin County where said company was incorporated, and in the office of the Secretary of State of the State of Minnesota, and duly published in said Hennepin County, all of which was done in accordance and compliance with the law of said State of Minnesota; and that from the 19th day of April, 1902, to the 23rd day of October, 1905, said company, pursuant to said acts of incorporation, and as a body corporate thereby duly created and existing, as aforesaid, carried on in said Hennepin County a large and extensive mercantile business.

29. That said defendant subscribed for and took his said shares of stock in said corporation, as aforesaid, with knowledge that all of the aforesaid steps had been taken, as aforesaid, to organize said corporation, and that said corporation, as incorporated, was carrying on its said business as such corporation; that said defendant, with knowledge of all the foregoing facts, paid the sum of $5,000.00 in to said corporation upon his said fifty shares of its capital stock, which amount so paid became and was a part of the capital of said corporation, as aforesaid; that he has received from said corporation dividends upon his said fifty shares, which dividends he still retains; that said proceedings were had and said steps taken to change the name of said corporation, as aforesaid, with the knowledge
34 and consent of said defendant; and that after its corporate name was so changed, said corporation continued to carry on its said business, as aforesaid, in and under the said name of Evans, Johnson, Sloane Company, with the knowledge and consent of said defendants.

That although long since due and duly demanded, said defendant has failed, neglected and refused to pay said assessment on his said stock, or any part of his liability thereon.

Wherefore, plaintiff demands judgment against said defendant for the sum of Five Thousand Dollars ($5,000.00), and interest thereon from October 4th, 1907, together with the costs and disbursements of this action.

H. V. RUTHERFORD,
Attorney for Plaintiff.

42 Broadway, New York City.

JAMES E. TRASK,
Of Counsel.

35 STATE OF MINNESOTA,
County of Ramsey, ss:

Charles E. Hamilton came before me personally, and being duly sworn doth say that he is the receiver of Evans, Johnson, Sloan Company, and as such the plaintiff in the above entitled action; that he has read the foregoing pleading and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on his information and belief, and as to those matters that he believes it to be true.

CHARLES E. HAMILTON.

Subscribed and sworn to before me on this 8th day of November, 1909.

[NOTARIAL SEAL.] JAMES E. TRASK,
Notary Public, Ramsey County, Minn.

My commission expires Feb. 19, 1916.

COUNTY OF NEW YORK, *ss:*

John J. Clarke being duly sworn says: he is of the age of 21 years and upwards. On December 6, 1909, about 12.25 P. M. deponent served the within summons and complaint on Arthur L. Selig, defendant, by delivering to and leaving with said Arthur L. Selig personally a copy thereof, at his office, 71 Grand Street, Borough of Manhattan, New York City. Deponent further says he knew the person served as aforesaid to be Arthur L. Selig mentioned and described in the summons as the defendant in this action.

JOHN J. CLARK.

Subscribed and sworn to before me December 6, 1909.

SAMUEL NEWMARK,
Notary Public, N. Y. Co.

36 *Answer.*

Circuit Court of the United States, Southern District of New York.

CHARLES E. HAMILTON, as Receiver of Evans, Johnson, Sloane Co.,
Plaintiff,
against
ARTHUR L. SELIG, Defendant.

The defendant by James, Schell & Elkus, his attorneys, answering the complaint, alleges:

I. As to each and every allegation contained in paragraphs numbered 2 to 13, inclusive, 17 to 23 inclusive and 25 to 28 inclusive of said complaint, defendant denies that he has any knowledge or information thereof sufficient to form a belief, and denies that he has any knowledge or information sufficient to form a belief as to the truth thereof and therefore denies the same.

II. Admits that on or about September 5th, 1904 he transferred the said fifty shares of stock referred to in Paragraph 16 of the complaint to Max Myer. That said transfer was duly made and entered on the books of the said corporation, and upon information and belief denies each and every other allegation contained in paragraph 16 of said complaint.

III. Upon information and belief, denies the allegation of paragraph 24 of said complaint that he ever became a party to the action referred to in said paragraph, and as to each and every other allegation of said paragraph, denies that he has any knowledge or information thereof sufficient to form a belief, and denies that he has
37 any knowledge or information sufficient to form a belief as to the truth thereof, and therefore denies the same.

IV. Admits that he has refused to pay any assessment on the stock as set out in paragraph 29 of said complaint, and as to each and every other allegation contained in paragraph 29 denies that he has any knowledge or information thereof sufficient to form a belief, and

denies that he has any knowledge or information sufficient to form a belief as to the truth thereof, and therefore denies the same.

Wherefore defendant demands judgment dismissing the complaint herein together with the costs of this action.

JAMES, SCHELL & ELKUS,
Att'ys for the Defendant.

Office & P. O. Address, 170 Broadway, Borough of Manhattan, City of New York.

38 CITY AND COUNTY OF NEW YORK, *ss:*

Arthur L. Selig, being duly sworn says that he is the defendant in this action; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

ARTHUR L. SELIG.

Sworn to before me this 31st day of December, 1909.

BARNETT COHEN,
Notary Public, N. Y. Co.

39 *Notice.*

Circuit Court of the United States, Southern District of New York.

CHARLES E. HAMILTON, as Receiver of Evans, Johnson, Sloane Company, Plaintiff,
against
ARTHUR L. SELIG, Defendant.

To Messrs. James, Schell & Elkus, Attorneys for Defendant, No. 170 Broadway, Borough of Manhattan, New York City, N. Y.:

Notice is hereby given that H. V. Rutherford, attorney of record for the undersigned, as plaintiff in the above-entitled action, died on the 15th day of December, 1911, and that I, the said plaintiff herein, have appointed John J. Clark, Room 2140, No. 42 Broadway, New York City, N. Y., as attorney for the plaintiff in this action.

In witness whereof, I have hereunto set my hand and seal this 30th day of December, A. D. 1911.

CHARLES E. HAMILTON, [SEAL.]
As Receiver of Evans, Johnson, Sloane Company, Plaintiff.

Signed in the Presence of
JAMES E. TRASK,
JAMES J. LYNCH.

40 On this 30th day of December, 1911, personally appeared before me Charles E. Hamilton, as Receiver of Evans, Johnson, Sloane Company, Plaintiff, to me well known, and known to

be the plaintiff in the within entitled action, and the person who signed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

JAMES E. TRASK,

[SEAL.] *Notary Public, Ramsey County, Minnesota.*

My commission expires Feb. 19th, 1916.

Endorsed: Circuit Court of the United States, Southern District of New York—Charles E. Hamilton, as Receiver of Evans, Johnson, Sloane Co., vs. Arthur L. Selig—(Copy) Appointment of John J. Clark as attorney for plaintiff in place of H. V. Rutherford.—John J. Clark, Plaintiff's attorney, 42 Broadway, Manhattan, New York City. —To Messrs. James, Schell & Elkus, Defendant's attorneys, 170 Broadway, New York.—Copy received Jan. 16, 1912, James, Schell & Elkus.

41

Extract from the Minutes.

At a Stated Term of the District Court of the United States for the Southern District of New York, in the Second Circuit, Held at the United States Court Rooms, in the Borough of Manhattan, in the City of New York, on Friday, the 12th day of January, 1912.

Present: Hon. Learned Hand, Circuit Judge.

CHARLES E. HAMLIN, as Receiver of Evans, Johnson, Sloane Company, Plaintiff,
against
ARTHUR L. SELIG, Defendant.

Now comes the plaintiff by James E. Trask, Esq., his attorney, and moves the trial of this cause. Likewise comes the defendant, by Abram I. Elkus, his attorney. Thereupon the parties consented that a jury of one be called and empaneled to hear the cause. After hearing the evidence for the plaintiff the court on the 29th day of February, 1912, directed a verdict for plaintiff for the sum of $5,000. with interest and costs.

An extract from the minutes.

THOMAS ALEXANDER, *Clerk.*

42 *Opinion.*

United States District Court, Southern District of New York.

CHARLES E. HAMILTON, as Receiver of the Evans-Johnson-Sloane Company
against
ARTHUR L. SELIG.

This is an action against the defendant upon his statutory liability as a stockholder of Evans-Munzer-Pickering Company, a corporation organized under the laws of the State of Minnesota. The corporation was incorporated in April, 1902, and on May tenth, 1904, its name was changed to Evans-Johnson-Sloane Company. On April twenty-third, 1902, the defendant purchased fifty shares of stock in the corporation of Evans-Munzer-Pickering which he sold on September twenty-fourth, 1904, to one Max Meyer. On September twenty-fifth, 1905, a petition in involuntary bankruptcy was filed against the Evans-Johnson-Sloane Company, after adjudication a trustee was appointed, and its assets distributed. Thereafter, on May eighth, 1906, a creditor of the Evans-Johnson-Sloane Company filed a bill in the District Court of Ramsey County, Minnesota, asking for the appointment of a receiver against the Evans-Johnson-Sloane Company. On June twenty-third, 1906, a receiver was
43 appointed and the proceedings instituted contemplated by Chapter 272; Laws of 1899; State of Minnesota, then contained in Sections 3122-3190 of the Revised Laws of Minnesota for 1905. On April twentieth, 1907, the said District Court by a decree in that action determineed and allowed claims against the corporation amounting in the aggregate to $146,169.51 as contained in the schedule of claims thereto annexed. This schedule set forth the names of all the claimants, the number of claims, the amount of the claims exclusive of interest, the amount of the interest of each claim, and the amount of each claim including interest. In the case of some of the claims it appears from this schedule that they were incurred prior to September twenty-fifth, 1904, and that the interest allowed was from a date prior to that time. On July sixth, 1906, the receiver appointed in that suit, who is the plaintiff in this action, filed his petition asking for an assessment upon the stock of all existing stockholders, of whom he alleged the defendant to be one. On the same date the District Court of Minnesota ordered that notice should be given to all such stockholders by publishing the same in a daily newspaper in the county and causing a copy of the order to be mailed to each of such stockholders and creditors, and thereafter on September fourth, 1906, the said District Court directed that an assessment equal to the par value of each share be made on each share and against the persons and parties liable as stockholders of said defendant corporation, for, upon or
on account of such shares, and that every person liable as
44 such stockholder of the defendant pay to the receiver one hundred dollars. This decree contained the recital that it

was made upon proof of due service and notice as prescribed in the petition.

In the trial of this action the plaintiff proved that the defendant purchased fifty shares of stock on the twenty-third day of April, 1902, and sold it on the twenty-fifth day of September, 1904. He then put in evidence of the judgment roll in the Minnesota suit and rested. He did not prove that the transfer of the defendant was made to avoid the liability of the owner. He did not prove that any of the indebtedness existing at the time of the assessment by the Minnesota court existed on September twenty-fifth, 1904, except as the roll proved it in that suit. Both parties moved for a verdict.

James E. Trask, for the plaintiff.
Abram I. Elkus, for the defendant.

HAND, *District Judge:*

Two questions are raised by this action; first, whether the District Court of Minnesota had jurisdiction to determine not only the amount of the liability of a past stockholder, supposing that some of the debts antedated his transfer of stock, but in addition that some of the debts did in fact antedate that transfer; second, whether the suit in Minnesota intended to conclude the defendant upon that question.

As to the first question I do not doubt that the court had jurisdiction. Since Bernheimer vs. Converse, 206 U. S. 516, it must
45 be accepted that for one who is a stockholder at the time of the dissolution all decrees in the parent suit are conclusive upon all matters relating to the amount of, the propriety of, and the necessity for the said assessment, and that Section 5, of Chapter 272, of the Laws of 1899, is constitutional and can be enforced as against such stockholders. The question in the case at bar is whether the statute has the same effect against one who has ceased to be a stockholder. Section 2864 of the Revised Laws of 1905 prescribes that the transfer of stock shall not exempt the stockholder from liability upon all the indebtedness existing at the time of the transfer. As to those therefore his relation to the corporation remains just as it did before the transfer. Section One of Chapter 272 of the Laws of 1899 includes stockholders who are liable to the corporation or its creditors, "for, or upon, or growing out of or in respect to the stock or shares at any time held or owned by such stockholders", clearly contemplating others than present stockholders. Moreover Section 2864 was in substance in existence when Selig took his stock. Therefore, he took it subject to a continuance of his liability after a transfer, and it begs the question to say that he had severed his connection with the corporation in 1904. The statute says quoad then existing indebtedness he did not. This being so he was as much and as little subject to the estoppel of judgment, as a stockholder who remained such. The measure of his liability was different, but that is only a guide to the court
46 which makes the assessment and cannot be thought to limit its power to determine the amount. Otherwise, the whole

assessment would be tentative as against a past stockholder, which cannot be the law, though the defendant seems to urge it in his brief. The theory of the estoppel of the judgment against the corporation upon the stockholder depends wholly upon his voluntary association of himself with the incorporators by the act of taking stock. Whatever be the contract which he makes at that time it is held to make him privy to a determination of the corporate assets, the deficiency and the propriety of an assessment against him. Now there is no conceivable reason, at least that I can see, why a stockholder, who remains liable for a portion only of the debts, if there are such debts, should not be bound, while a stockholder who is liable for all debts, if there are any debts, should be bound by such a determination. Each is no doubt possibly subject to assessment when he is not liable at all, for the existence of debts is a condition to his liability, but it is no more so in one case than in the other, and the theory so far as it is developed, that each is concluded by his consent in respect of the amount and existence of corporate debts, applies equally to each. There seems to me to be no possible principle which jutifies saying that the past stockholder cannot be concluded by a determination that some of the indebtedness was in existence at the time of his transfer, provided the statute, when he bought his stock said that a transfer should not
47 exempt him. I do not therefore think that the court lacked jurisdiction to conclude the defendant merely because he had sold his stock.

The more important question is whether the statute permitted, and the decree in the parent suit intended, to include among those liable as stockholders, all who had transferred their stock. The decree of July sixth, 1906, follows the language of the statute ipsisimis verbis. It lays an assessment upon each share of stock and upon each person liable as a stockholder, and then it provides "each and every person liable as such stockholder of said defendant pay" the receiver one hundred dollars for each share of stock upon which he is liable as a stockholder. The interpretation of this decree in Hamilton vs. Levison was too broad, for it did not mean to lay an assessment upon every person named in the schedules for the number of shares set opposite his name. That language however was irrevelant to the decision in that case, because it was proved that Levison was a stockholder and that there were of the debts in existence at the time the suit was instituted some which antedated his transfer. It was proved therefore in that case dehors the record under any construction that he was a person liable as a stockholder. The defendant in this case urges however that although it has been proven that he was a stockholder, this did not make him liable as such without the added proof that some of the existing debts antedated his transfer, or in the alternative that his sale was for the purpose of avoiding his liability. I have already decided that the absence of such proof did not prevent the jurisdiction
48 of the court, provided the statute meant to give it and the court meant to exercise it. There can be no doubt that provided the defendant was within the class indicated by the decree, he cannot now question the fact that the debts for which he was

liable, would require a full assessment upon him and his shares. The sole question therefore narrows to this: was it necessary in order to bring him within the terms of the decree that the plaintiff should show the existence of some of the present indebtedness at the time of this transfer? This question in turn depends wholly upon the meaning of the phrase, "persons liable as stockholders." A past stockholder is liable as a stockholder for all past debts, Gunnison vs. U. S. Investment Co., 70 Minn. 292. He is among the class therefore of those "liable as stockholders," at least in some cases. It is urged that his liability is conditional upon the existence of past debts, and this is true, but, as I have already shown, the same thing is true of the liability of present stockholders, for they are liable only in case of the present existence of some debts. Why should the words be construed conditionally in one case, and not in the other, when a similar fact, as one chooses to take it, is equally a condition or a limitation upon the liability itself? Furthermore, consider the purpose of the statute itself which was to adjust the burdens equitably between all those who must in the end bear them. Such an adjustment was inevitably subject to defeat in case the court mistook those who were or had been stockholders, for the
49 acceptance of stock was a condition of any jurisdiction and for that reason the decree would follow the limitation of jurisdiction by assessing those only who are liable as stockholders. It would have been idle to make the decree speak more broadly than the jurisdiction of the court extended; on the other hand the suit might fail in its purpose of an equitable adjustment if it subjected its calculations to any *any* more chances than were necessary. The court's duties were to determine the indebtedness and the assets of the corporation and to apportion the deficiency upon all those stockholders liable who were financially responsible in proper proportions. As the assessment was necessarily somewhat provisional, the court might return to the stockholders any surplus. To subject its assessment to the chance of defeat in case the receiver did not prove dehors the record the existence of some indebtedness at the time of the transfer of a past stockholder would be unnecessarily to introduce a serious element of uncertainty into its calculations. The nature of the undertaking required as much certainty as was compatible with the power of the court, which included all the facts other than those upon which its jurisdiction depended, that is to say, all facts except whether the person assessed had ever actually accepted the stock, together with the personal defenses mentioned in Great Western Telegraph Co. vs. Burnham, 162 U. S., 329, and Shaw, etc., Mfg. Co. vs. Kilbourne, 80 Minn. 125, which clearly could not be ascertained in advance. At least it is not to be supposed that the court only intended to make recovery conditional upon reproving a fact which it had already found,
50 and necessarily found, and upon which its jurisdiction was not dependent; a fact moreover which concededly need not be reproven as against the great mass of stockholders. I do not rely in this conclusion on the change in Section 3186, which seems to me here inapplicable.

I therefore think that by the term "persons liable as stockholders" the court meant to assess all those who should be shown to be holders of stock at the time of the decree, or to have held stock thereafter, and to leave open only that fact, the extent of their holdings and the personal defenses above mentioned. Whether the court in fact was wrong in assessing the defendant for the full amount of the shares because of the indebtedness existing at the time of the transfer is not a question now open for discussion, under too obvious principles. Nor need I consider whether the basis of the determination was that the prior debts needed his contribution, or that his transfer was not bona fide. Given jurisdiction and the actual determination, the course of reasoning by which the result was reached is not open for collateral inquiry.

The remaining question relates to the Statute of Limitations, which I have not examined, because I regard myself as concluded by Bernheimer vs. Converse, supra. Whether the Supreme Court was in error in regard to the decision of the Court of Appeals is not a question which is open before me, because the disposition of that case required that decision and it is authoritative upon me.

51 If the defendant wishes in this case as was done in Bernheimer vs. Converse to raise the question of the constitutionality of the statute, as I have interpreted it, he may do so, and the question can go directly to the Supreme Court where that matter may then be re-argued in the light of the decision of the Court of Appeals of the State of New York. I therefore will direct a verdict for the plaintiff for the sum of five thousand dollars with interest and costs.

L. H., *D. J.*

U. S. District Court, S. D. of N. Y. . Filed Feb. 29, 1912.

52 Judgment.

United States District Court, Southern District of New York.

CHARLES E. HAMILTON, as Receiver of Evans, Johnson, Sloane Company, Plaintiff,
against
ARTHUR L. SELIG, Defendant.

Judgment.

The issues of fact and law in this action having been regularly brought on for trial on the 12th day of January, 1912, before Mr. Justice Learned Hand, a Judge of said Court, with a jury, at a term of said Court held at the United States Courts and Post Office Building in the City of New York, (Borough of Manhattan), County and State of New York, and the defendant having been personally served with the summons in said action, and having appeared by his Attorney herein, and answered the complaint, and the Court having heard the allegations and proofs of the respective parties, and at

the conclusion of the testimony the plaintiff having moved the Court to direct a verdict for the plaintiff, and the defendant, at the same time having moved the Court to direct a verdict for the defendant, and the case having been thereby withdrawn from the jury; and the Court having heard the arguments of Counsel for plaintiff and defendant respectively, in support of their respective motions; and after due deliberation, having made and filed on the 1st day of March 1912, its decision in favor of the plaintiff and against
53 the defendant, and determined that the plaintiff is entitled to recover of the defendant the sum of $5,000, and interest, as hereinafter stated, and rendered and directed its verdict for plaintiff for the said sum of $5,000 and interests; and the plaintiff's costs and disbursements having been duly taxed at the sum of Sixty-eight dollars and sixty-five cents.

Now, therefore, upon said decision and determination, on motion of John J. Clark, Attorney for Plaintiff, it is

Adjudged and decreed that said plaintiff, Charles E. Hamilton, as Receiver of Evans, Johnson, Sloane Company, recover of said defendant Arthur L. Selig, the sum of Six thousand three hundred and forty-nine dollars and fifteen cents ($6,349.15) principal and interest, found and determined as aforesaid, together with $68.65 costs and disbursements taxed as aforesaid, making a total of six thousand four hundred and seventeen dollars and eighty cents ($6,417.80); and that said plaintiff have execution therefor.

Judgment signed and entered this 3rd day of April, 1912.

THOMAS ALEXANDER, *Clerk.*

Endorsed: United States District Court, Southern District of New York. Charles E. Hamilton, as Receiver of Evans, Johnson, Sloane Company, Plaintiff, vs. Arthur L. Selig, Defendant. (Copy) Judgment and Notice of Entry. John J. Clark, Attorney for Plaintiff, 42 Broadway, Borough of Manhattan, New York City. To Messrs. James, Schell & Elkus, Defendant's Atorneys, 170 Broadway, Manhattan, New York City. Copy received Apr. 4, 1912, James, Schell & Elkus. U. S. District Court, S. D. of N. Y., Filed Apr. 3, 1912, 3.20 P. M.

54 United States District Court, Southern District of New York.

At Law.

CHARLES E. HAMILTON, as Receiver of Evans, Johnson, Sloane Company, a Corporation, Plaintiff,
against
ARTHUR L. SELIG, Defendant.

Bill of Exceptions.

Appearances:

James E. Trask, of counsel for the plaintiff.
James, Schell & Elkus, attorneys for the defendant; Abram I. Elkus, of Counsel.

55 Be it remembered that at the District Court of the United States for the Southern District of New York, held at the court rooms of the United States Courts in the Post Office Building in the City of New York, before Hon. Learned Hand, appointed to hold said court, on January 12, 1912, the issues joined between the parties aforesaid came on to be tried by jury; and on that day there came both the plaintiff and the defendant, by their respective attorneys, and by stipulation a jury of one was empaneled to hear the case.

Mr. ELKUS: If your Honor please, I would like to make a motion that the bill of complaint be dismissed upon the ground that we are in the wrong court, that according to the allegations of the bill this action is one in equity and not at law. Although there is a demand for a money judgment, the allegations of the bill make it an equity case. I call your Honor's attention particularly to paragraph 16 of the complaint, on page 9 of the copy which I have.

56 The COURT: I take it that this being at law, that the plaintiff insists on going on at law, and that the transfer will have to be taken as a valid transfer and not set aside.

Mr. TRASK: In actions of this kind the cases are uniform in holding that there is a concurrent jurisdiction either in law or at equity as the plaintiff elects; that is to say, he may elect to treat the alleged transfer as void and proceed in law, or if he thinks there will be any advantage, even if it is only a technical advantage, in having it set aside, he can go to equity.

The COURT: Whatever may be necessary preliminaries in any court if this requires the setting aside of that transfer——

Mr. TRASK: Oh, it does not.

The COURT: If that is true, then the case will have to be determined upon the assumption that that transfer still exists. Admitting that notwithstanding the transfer the question whether the stockholder is liable or not is something that is judicable by the Minnesota Court, it may be that that question is concluded here. Of

course, I cannot tell until I know more about the facts. In so far as your action here requires the setting aside of that transfer by any act of this Court, of course it can be done. You will have to stand on your complaint.

Mr. TRASK: I think that we might at this time introduce evidence here to show that our allegation that this transfer is colorable, not that it is void, are well taken. Our theory of the case is that all these facts were before the Minnesota Court and were deter-
57 mined there and are not open for determination here.

Mr. ELKUS: You don't claim that this particular assignment was litigated in the Minnesota Court?

Mr. TRASK: I think it was.

Mr. ELKUS: There is no record of it.

Mr. TRASK: Because there was prior indebtedness, and the defendant was subject to a stockholder's liability. Now, if it was necessary, to make an assessment of 100 cents on the dollar, that it should be adjudicated in the Minnesota Court that the transfer was merely colorable, I assume that that was done.

The COURT: I will deny the motion.

Mr. ELKUS: Exception.

Mr. TRASK: I offer in evidence an exemplified copy of the articles of incorporation of this corporation as organized under the name of Evans, Munzer Pickering & Company, together with an exemplified copy of the certificates of amendment purporting to change this name from Evans, Munzer, Pickering & Company to Evans, Johnson, Sloane Company. That is from the office of the Secretary of State of the State of Minnesota.

Mr. ELKUS: I object to it upon the ground that it is incompetent and not properly proven or certified in accordance with the law or the statutes of the United States, to entitle it to be put in evidence.

The COURT: Objection overruled.

Mr. ELKUS: Exception.

Paper received in evidence and marked Plaintiff's Exhibit 1.

58 Mr. TRASK: I offer in evidence an exemplified copy of the same original articles, together with a certified copy of the same original certificate of amendment, changing the name, this record being from the office of the Register of Deeds of Hennepin County, Minnesota.

Mr. ELKUS: I make the same objection.

The COURT: Objection overruled.

Mr. ELKUS: Exception.

Paper received in evidence and marked Plaintiff's Exhibit 2.

Mr. TRASK: I next offer in evidence an exemplified copy of the record of publication of the original articles of incorporation, together with an exemplified copy of the records of the publication of the certificate of amendment, this record being from the office of the Secretary of State of the State of Minnesota.

Mr. ELKUS: I make the same objection.

The COURT: Objection overruled.

Mr. ELKUS: Exception.

Paper received in evidence and marked Plaintiff's Exhibit 3.

Mr. TRASK: I offer in evidence a certified copy of the order of judgment of the United States District Court District of Minnesota, Fourth Division, in the Matter of the Bankruptcy of the Evans, Johnson, Sloane Company. This order of judgment is the adjudication of bankruptcy of that corporation.

59 Mr. ELKUS: I object to this specifically on the ground that it is incompetent, and that it is not proven or certified in accordance with the law, to entitle it to be admitted in evidence; and further upon the ground that the original here does not appear to have been made by any Judge, but by a clerk in the name of a Judge, and that that is improper under the Bankruptcy Act.

The COURT: Objection overruled.

Mr. ELKUS: Exception.

Paper received in evidence and marked Plaintiff's Exhibit 4.

Mr. TRASK: I offer in evidence a certified copy of the discharge in bankruptcy of that corporation.

Mr. ELKUS: I object to it as incompetent, immaterial and irrelevant.

The COURT: Objection sustained.

Mr. TRASK: Exception.

Mr. TRASK: I offer that for identification.

Paper marked Plaintiff's Exhibit 5 for Identification.

Mr. TRASK: I offer in evidence an exemplification of the records of the parent suit, brought in the District Court, County of Ramsey, Second Judicial District of the State of Minnesota, in which Marshall Field & Company, on behalf of itself as a creditor and on behalf of all the other creditors, brought an action against this defendant, the Evans, Johnson, Sloane Company, for the purpose of

60 winding up the corporation and enforcing the stockholder's liability. It contains the original summons and complaint with proof of service and the appearance of the defendant corporation; it contains also the order of the Court adjudging the corporation insolvent and appointing a receiver; it contains the petition for an assessment, the order for hearing providing for notice; it contains the proof of service of the notice of hearing; it contains the order of assessment, the claim statements of the creditors who filed their claims, and also the Judgment of the Court adjusting and adjudging the claims of the creditors. In short it contains all the proceedings and records of the parent suit.

Mr. ELKUS: I object to the admission of this exemplification of the record in evidence, on the ground that it is incompetent, immaterial and irrelevant, not proved in accordance with the law, or certified in accordance with the law, to be entitled to be admitted in evidence; and upon the ground that we are not bound by all or any of the matters stated therein to be decided, and particularly are not bound or affected by any of the matters except such as are decided by the bill of complaint, or complaint and answer, and which arose by those issues, and none of the other collateral matters which are

attempted to be decided here; further, upon the grounds that the complainant in that suit had no authority to bring a suit of law, that the Court was without jurisdiction, that the case was decided without jurisdiction, and that there were no facts properly proven before that Court which gave it jurisdiction.

61 The COURT: Do you mean over your client, or over the whole subject matter?

Mr. ELKUS: Over my client, and as far as may be necessary to protect my client, I will say over the whole subject matter.

The COURT: I will take the record.

Mr. ELKUS: I except.

Further I object specifically to all matters in this record going into evidence as follows: First, the summons and complaint, the proof of service, the notice of appearance, the order of judgment adjudging the corporation insolvent and appointing a receiver, upon the ground specifically that the corporation sued having been in bankruptcy, any right any creditor had to bring suit rested in the trustee in bankruptcy, and the fact that the corporation was claimed to be discharged as is alleged here, by the bankruptcy court, is no reason why the claim which the creditor had could not have been enforced by him. It has been decided over and over again that even though a bankrupt has been discharged the claims which accrue to any creditor against the bankrupt still were in the trustee, and unless there is some particular reason, because of the statute which does away with the provision of the Bankruptcy Act, it is our contention, and we make the claim, that any cause of action accrued to the trustee, and while the bankrupt may be discharged the trustee was still there, still was in existence and still had the power to enforce this liability if there was any. Therefore I want to make the point perfectly clear that this so-called parent action was brought by a per-

62 son who had no right to bring it, and therefore could not confer upon the Court jurisdiction, and the Court could not have jurisdiction.

I object specifically to the proof of service of process which appears in this record, upon the ground that it is insufficient in law and insufficient in fact, and is incompetent and immaterial, and is insufficient to bind the defendant as is claimed.

I object to any proceedings now which are contained in this record going in evidence, which are set forth in this index as follows: The order limiting time for creditors to present their claims; proof of mailing same; proof of publishing same. I make this motion upon the ground that they are utterly irrelevant and immaterial to the issues here. I object to the petition for order assessing stock, and the order fixing time for hearing thereon, the proof of publishing and mailing notices of hearing on petition on the assessment, and the order and judgment assessing stock, and the proof of mailing the same, upon the ground that they are incompetent, immaterial and irrelevant; that the proof of publishing the said notice is insufficient in law and in fact, and no sufficient notice was given to this defendant to bind him, and that the Court did not have jurisdiction to make either of the orders which are offered in evidence by this

record; that all those proceedings are after the order of judgment adjudging the corporation insolvent and appointing a receiver; and upon the same ground as I object to the summons and complaint, and the order and judgment appointing a receiver. I object to the balance of the record, the judgment allowing claims of creditors, to the complaint of creditors setting forth their claims, as incompetent, immaterial and irrelevant, upon the same grounds as the others, and having nothing to do with the issues in this action.

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The COURT: Objection overruled.

Mr. ELKUS: Exception.

Record received in evidence and marked Plaintiff's Exhibit 6.

Mr. TRASK: I think counsel will perhaps admit that the name of this corporation which was originally Evans, Munzer, Pickering & Company was on the 10th day of May, 1904, changed to Evans, Johnson, Sloane Company. There is an allegation in their answer which practically admits that. I think that was their intention when pleading. It will shorten the trial somewhat if that admission is made.

Mr. ELKUS: No, your Honor, I think they had better make their proof;

Mr. TRASK: It is alleged in paragraph- 14 and 15 of this complaint that this change was made and they do not deny paragraph-14 and 15. Still, in other parts, where the details were pleaded of the change of name, those have been denied on information and belief.

The COURT: If you have one good allegation that is not denied that is enough.

Mr. TRASK: I will put in the proof. I will read from the deposition of Mr. William A. Alden.

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"WILLIAM A. ALDEN, having been duly sworn, testified as follows:

Examined by Mr. TRASK:

"Q. Mr. Alden, state your name, residence and business?

A. William A. Alden; Minneapolis, Minn.; oriental rugs.

"Q. What was your business from April 19, 1902, to February 25, 1905?

A. I was a director and stockholder in the corporation of Evans, Munzer, Pickering & Company, which name was afterwards changed to Evans, Johnson, Sloane Company.

"Q. How long have you been a resident of the State of Minnesota?

A. 48 years.

"Q. Give the street and number of your residence?

A. 64 Clarence Avenue, Minneapolis, Minnesota.

"Q. How long did your connection with the corporation continue?

A. From the time it was incorporated until the latter part of February, 1905.

"Q. State the nature and extent of the business done by the corporation?

A. The nature of the business was a department store or general dry goods business, and the volume of business was up to nearly a million dollars a year."

The COURT: Does not this change of name all rest on documents?

Mr. TRASK: Not wholly. I don't know but that the certificate of amendment would be proof without anything else, but if I am going to make proof in absolute compliance at every step, it will be necessary to read this deposition and show that a resolution was passed in a meeting of the stockholders authorizing that certificate.

The COURT: I thought you had the minute book here?

Mr. TRASK: I have it.

The COURT: The minute book is the best evidence of the resolution.

Mr. TRASK: Yes, but the minute book does not specifically refer to the resolution as having been passed, but the deposition of this witness shows that at that meeting where they did in fact, as shown by the record book, authorize the change of name, the deposition shows that the resolution was actually passed.

The COURT: What do the minutes show?

Mr. TRASK: The minutes show that the name was changed, and show the vote by which it was changed, but it does not embody the resolution, and does not set it out.

The COURT: It sets up the fact that a vote was made changing the name? Supposing the resolution was never formally written out, but was made at the meeting by word of mouth, the resolution stating that it was made would be sufficient.

Mr. TRASK: It does not use that language. The resolution is a little ambiguous.

The COURT: Let us see it.

Mr. TRASK: There is one meeting on page 40 and one on page 42. The first one is on page 40. That is a directors' meeting, and the second is a stockholders' meeting. The first is "April 19, 1904. Regular meeting of the Directors held this day at 11:30 A. M. Present, President Evans in the Chair. Present, Evans, J. F. & J. P. Elwell, Alden and Johnson. Moved by Elwell and seconded by Alden that Ed. Sloane be elected a director of this company. Carried. Minutes of the last meeting were read and approved. Referring to changing the name of the company, Mr. Evans stated that Messrs. Pickering and Munzer desired their names removed from the present title, and read a communication from Judge McGee in reference thereto. The reduction of the number of directors from 7 to 5 was determined upon to take effect at the same time the name was changed. Every director was in favor of the reduction to 5 directors. Every director was in favor of changing the firm name to Evans, Johnson, Sloane Company. Mr. Pickering's resignation as herewith was read and accepted," etc.

Then on page 42, "May 10, 1904." This is the record of the

stockholders' meeting. "Special Meeting of the Common Stockholders was held this day at 11 A. M. in the office of the company. President, Evans in the Chair. Stockholders present in person were Evans, Sloane, Alden, Elwell and Johnson. By proxy Pickering and Munzer, representing the entire common stock of the company. The secretary read the call, date of April 22, 1904, and stated that each and every stockholder had been notified in writing by mail at their registered address with the legal time as stated in our articles of incorporation, and that every stockholder had acknowledged the notice. Upon motion, the Chair appointed Mr. Alden as teller to pass on proxies and count the vote cast. Upon reading
67 the proposed amendment the teller cast 1490 shares of common stock of the 1500 in favor of the amendment as read from the call, and the President declared the amendments adopted (each of the stockholders desired the teller to cast his shares). At 11:30 moved to adjourn. Carried. W. E. Johnson, Secretary."

The COURT: Are those amendments in the book?

Mr. TRASK: No.

The COURT: Do the amendments comprise the change of name?

Mr. TRASK: The testimony of Alden is that he was present at that meeting, and that at that meeting a resolution was offered as embodied in the certificate, of the change of name, and that it was authorized.

The COURT: It speaks of amendments submitted. I suppose that at the time of the call there were certain amendments annexed to the call.

Mr. TRASK: I will continue the reading of the deposition.

"Q. By department store you mean what kind of business?

A. Dry goods, and kindred lines, including household furnishings.

"Q. Was it a manufacturing business to any extent?

A. Only to a very small extent.

"Q. Explain more clearly the nature of the business conducted by the corporation.

A. It was a business of buying and selling merchandise.

"Q. State whether or not you were an officer of the corporation?

A. I was a director.

"Q. During what period?

A. During all of the period from the time it was incor-
68 porated until February 25, 1905.

"Q. State whether or not you were familiar with the affairs of the corporation during all of that time.

A. I was.

"Q. What was its place of business.

A. 619 to 629 Nicollet Av., Minneapolis.

"Counsel for plaintiff at this point requested the officer before whom this deposition is being taken to mark paper for identification as plaintiff's Exhibit 1, said paper purporting to be the Articles of Incorporation of said company, and certificate of amendment changing its name.

"WILLIS C. OTIS: 'I have marked the paper Plaintiff's Exhibit 1. W. C. Otis, July 19, 1910.'

"Q. I call witness' attention to paper just marked for identification as plaintiff's exhibit 1, particularly the first part of it, which purports to be signed by one William A. Alden, and ask witness if you are the William A. Alden there named.

A. I am.

"Q. You signed the Articles of Incorporation?

A. Yes, sir.

"Mr. TRASK: In connection with the testimony of this witness and as part of the examination, plaintiff produces and exhibits and offers in evidence paper marked for identification, Plaintiff's Exhibit 1.

"Q. How long did the corporation transact business under the name Evans, Munzer, Pickering & Co.?

A. From April 18, 1902, to May 14, 1904.

"Q. In what name did it transact its business after the
69 14th of May, 1904?"

Mr. ELKUS: That question I object to, under the stipulation between us, as incompetent, irrelevant and immaterial.

The COURT: Objection overruled.

Mr. ELKUS: Exception.

"A. Evans, Johnson, Sloane Co.

"Q. Was the amount or nature of the business changed at the time of the change of its name?"

Mr. ELKUS: I object to that as calling for a conclusion and as incompetent, immaterial and irrelevant.

The COURT: Objection overruled.

Mr. ELKUS: Exception.

"A. No, sir."

"Q. It continued to carry on its business after the change of name so long as you remained connected with the corporation?"

Mr. ELKUS: I object to that on the ground that the question implies that the name was regularly, legally and properly changed.

The COURT: Objection overruled.

Mr. ELKUS: Exception.

"A. Yes, sir.

"Q. State whether or not the corporation kept a minute book."

Mr. ELKUS: I object to that as incompetent, irrelevant and immaterial. This witness is not shown to be able to testify whether a minute book was kept, or whether it was properly kept; and I am objecting perhaps a little in advance, because the next move was to offer the minute book in evidence, and I want to maintain
70 that there was not sufficient proof which entitled them to put the minute book in evidence, and that is why I want to make the objection now.

The COURT: Objection overruled.

Mr. ELKUS: Exception.

"A. It did.

"I here hand to officer before whom this deposition is being taken, a book which I ask him to mark for identification as Plaintiff's Exhibit 2, the same purporting to be the minute book of the corporation.

"WILLIS C. OTIS: 'I have marked the book for identification, Plaintiff's Exhibit 2, July 19, 1910, W. C. Otis.'

Mr. TRASK: This is the book so marked.

"Q. I call witness' attention to the book just marked for identification as plaintiff's Exhibit 2, and ask witness if he is able to identify this book?

A. I am.

"Q. What is it?"

Mr. ELKUS: I object to that as specifying the book, and as incompetent, immaterial and irrelevant, and no proper foundation laid for it.

The COURT: Objection overruled.

Mr. ELKUS: Exception.

"A. It is the minute book of the corporation.

"Q. Have you seen this book before?

A. Yes, sir.

"Q. When?

A. At various periods during the time I was director.

'Q. Where did you see it?"

Mr. ELKUS: I object to that as incompetent, immaterial and irrelevant.

71 The COURT: Objection overruled.

Mr. ELKUS: Exception.

"A. Among the books of the corporation.

Mr. ELKUS: I move to strike that out as being a conclusion of the witness and not a statement of fact.

The COURT: Motion denied.

Mr. ELKUS: Exception.

"Q. Where were the books of the corporation kept at that time?"

Mr. ELKUS: I make the same objection.

The COURT: Objection overruled.

Mr. ELKUS: Exception.

"A. At the place of business on the fourth floor.

"Q. State whether or not this book was kept among the other books of the corporation there."

Mr. ELKUS: I make the same objection.

The COURT: Objection overruled.

Mr. ELKUS: Exception.

"A. It was.

"Q. State whether or not you frequently saw it there among those books of the corporation."

Mr. ELKUS: I make the same objection.
The COURT: Objection overruled.
Mr. ELKUS: Exception.

"A. I did."
"Q. In whose handwriting is this book, Plaintiff's Exhibit 2, kept?
A. In the handwriting of the Secretary of the Company.
"Q. Is it in the handwriting of more than one person?
A. Yes, sir; in the handwriting of A. V. Hamburg, first secretary, Adam Pickering, second secretary and William E. Johnson, third and last Secretary.
"Q. Mr. Hamburg continued secretary until Adam Pickering became Secretary?
A. Yes sir.
"Q. Then Mr. Pickering continued Secretary until Mr. Johnson became secretary?
A. Yes sir.
"Q. State whether or not Mr. William E. Johnson after
72 being elected continued to be secretary so long as you were connected with the corporation?
A. Yes sir, he did.
"Q. Then if I understand you correctly, plaintiff's Exhibit 2 is in the handwriting of either one or the other of these three secretaries?
A. Yes sir, it is.
"Q. I call your attention to the record of the directors' meeting as found on page 40 of the minute book, being a record of the meeting under date of April 19, 1904. Have you turned to it?
A. Yes sir.
"Q. In whose handwriting is that record?"

Mr. ELKUS: I object to that as immaterial.
The COURT: He has already stated that I think. He gave the dates when Mr. Johnson was secretary. I will overrule the objection.
Mr. ELKUS: Exception.

"Q. He was secretary at the time?
A. Yes sir.
"Q. State whether or not you were present at the meeting.
A. I was.
"Q. Do you remember that meeting?
A. Yes sir.
"Q. Are you familiar with the handwriting of William E. Johnson, Secretary?
A. Yes sir.
"Q. It is signed by a signature purporting to be that of William E. Johnson; do you know that signature?
A. Yes sir.
"Q. Whose signature is it?
A. William E. Johnson, Secretary.
"Q. On the margin of that record is found the words: 'Approved April 26, 1904;' whose handwriting is that?"

Mr. ELKUS: I object to those words going into the record
73 I have no objection to his stating, if it is limited to that, tha
the words are in that handwriting, but I don't want to have it in the record that way.

The COURT: The words will not be regarded as in evidence.

"Q. Is that a true and correct record of the meeting?"

Mr. ELKUS: I object to that.

Mr. TRASK: I will withdraw the question.

"Q. I call your attention to the names of the persons who are stated by this record to have been present. They appear to be J. F. Evans, J. F. and J. T. Elwell, Alden and Johnson. State whether or not you know the persons whose names appear in this record as being present."

Mr. ELKUS: I object to that upon the ground that it apparently gets the record in evidence. I object to anything that brings this record in evidence.

The COURT: I don't see what bearing it has, whether he knew the people who were there or not. You had better withdraw the question.

Mr. TRASK: I withdraw it.

Mr. TRASK: At this point of the deposition the record of the meeting of April 19th was offered in evidence, and it was read into the deposition for the purpose of identifying it. I don't think there is any question on that point. I now offer in evidence the record of the meeting of directors of the corporation held under date of April 19th, 1904, as found on page 40 of the minute book.

Mr. ELKUS: I object to it as incompetent, immaterial and irrelevant, no proper proof of it having been made. The directors cannot change the name of a corporation.

74 The COURT: I don't know what the Minnesota statute is about it. Does it require both the directors and the stockholders or just the stockholders?

Mr. TRASK: I think the stockholders would be sufficient. I think it best to put in all that was done in connection with this change of name.

Mr. ELKUS: The record of what took place is not properly proved here to entitle it to be admitted in evidence. There is no proof that the minutes were correctly kept, or that they are the correct records of what took place at the meeting.

The COURT: I will overrule the objection.

Page 40 of the minute book received in evidence and marked Plaintiff's Exhibit 7.

"Q. I call your attention to the record of the meeting of stockholders under date of May 10, 1904, as found on page 42 of the minute book, plaintiff's exhibit 2, and ask you in whose handwriting it is.

A. William E. Johnson, secretary.

"Q. It is signed W. E. Johnson, secretary, is it not?

A. Yes sir.

"Q. Do you recognize the handwriting of the signature?

A. Yes sir.
"Q. Whose handwriting is it?
A. William E. Johnson, Secretary.
"Q. Was he secretary at the time?
A. Yes sir.
"Q. On the margin is found the words, written in red ink, 'Approved June 2, 1904.' Whose handwriting is that?"

Mr. ELKUS: I object to the words going in evidence.
The COURT: It will only go in as identifying the words.

75 "A. William E. Johnson, secretary.
"Q. Were you present at the meeting?
A. Yes sir.
"Q. The record states that Evans, Sloane, Alden, Elwell and Johnson were present, and Pickering and Munzer were present by proxy. State whether or not the persons named there as being present were all the common stockholders?"

Mr. ELKUS: That is objected to as incompetent, immaterial and irrelevant, and on the ground that the witness is incompetent to testify.

Mr. TRASK: I withdraw that question.

"Q. I call your attention to the certificate of amendment being the latter part of Exhibit 1 which states that at the meeting of the stockholders May 10, 1904, a resolution was adopted changing the name of the corporation from Evans, Munzer, Pickering & Co. to Evans, Johnson, Sloane Co. Was such resolution introduced at that meeting?"

Mr. ELKUS: I object to that as incompetent, immaterial and irrelevant. If the minute book is in evidence here the minute book is the best evidence of what took place.
The COURT: That meeting of the stockholders is not yet in evidence. Are you going to put it in?
Mr. TRASK: Yes sir. I offer in evidence at this time the record of the stockholders' meeting under date of May 10, 1904, as found on page 42 of the minute book, and ask that this page be marked Plaintiff's Exhibit 8.

Mr. ELKUS: I object to it as incompetent, irrelevant and immaterial, and no proper foundation laid for it, and no proof at all
76 as to this part of the minute book that it correctly states what took place at the meeting, nor that the record is a record of the meeting of the stockholders, nor is there any proof who was present, or what stockholders were present, nor that a majority were present as required by the law of Minnesota, and no proof that the meeting was called as required by the law of Minnesota, or that the notice was given in order to change the name, as required by the laws of Minnesota.

The COURT: There is no proof of the call. This was not the annual meeting, was it?
Mr. ELKUS: No, it was a special meeting.
The COURT: Have you any proof of the call?

Mr. TRASK: I have no proof except what is contained in the record, which recites that the regular notices were given. I have no other proof. I am unable to find it, and the records of it were probably destroyed.

The COURT: I think that comes within the rule, where the records of a corporation recite that those things were done which are necessary to the regularity of the meeting, I think it is presumed that the things were properly done. I will take it.

Mr. ELKUS: Exception.

Page 42 of the minute book received in evidence and marked plaintiff's Exhibit 8.

"Q. I call your attention to the certificate of amendment being the latter part of Exhibit 1 which states that at the meeting of the stockholders, May 10, 1904, a resolution was adopted changing the name of the corporation from Evans, Munzer Pickering & Co. to Evans, Johnson, Sloane Company. Was such resolution introduced at that meeting?"

77 Mr. ELKUS: I object to that question upon the ground that it is incompetent, immaterial and irrelevant, and they cannot supplement the minutes. If we are going to have the minutes in evidence they must stand on the minutes, unless they show that they were incorrectly kept. They have not shown that, but on the contrary they say th*ere* were correctly kept.

Mr. TRASK: We have not said that.

Mr. ELKUS: If you have not said, then they are not admissible in evidence.

The COURT: The minutes are of no consequence to you except as to prove that the meeting was regularly called.

Mr. TRASK: They show that the change of name was voted.

Mr. ELKUS: No.

Mr. TRASK: They show that action was taken with reference to the change of name.

Mr. ELKUS: Mr. Trask has stated that they do not claim that the minutes were correctly kept.

Mr. TRASK: I claim that the record of the stockholders' meeting is not full enough, in that it omits to state the resolution. Now, there is the certificate, there is the meeting, there were the stockholders present, and acting on a matter with reference to the change of name, and here is a person testifying, who was present, supplementing the record for the purpose of showing that something was done which was not actually put into the minutes.

The COURT: Is there anything in the record about it at all? What the proposed amendments are does not appear?

78 Mr. TRASK: The record of the meeting is not wrong in the sense that it is false. It is a true record as far as it goes, but something was done, apparently on the face of the record something was done which is not expressed in the record. Amendments were passed, and they don't say what they were. It is entirely proper to supplement this record to show what was done.

The COURT: You don't prove that this was one of the amendments. All he says is that a resolution was passed at the meeting.

Mr. TRASK: Here is a record of a meeting in which amendments were passed, and the date of it is expressed, May 10th, 1904. Now, the witness is asked if he was present at that meeting, and his attention is called to the certificate of amendment, and he is asked if a resolution was offered in that meeting as stated in that certificate. The certificate of amendment which is in evidence states that a resolution was adopted. Now, the witness says that he was present at the meeting, and he is asked the question if that resolution was in fact offered at that meeting. Now, that is entirely proper, it seems to me.

The COURT: I will overrule the objection.

Mr. ELKUS: Exception.

"A. Yes, sir, it was.

"Q. Were you present at the meeting?

A. Yes, sir.

"Q. Do you know whether or not at that meeting the stockholders acted on the resolution offered?"

Mr. ELKUS: I object to that on the same grounds, and also upon the ground that the minutes are the best evidence, and until they first prove that a full record was not kept of the meeting,
79 they cannot supplement it and change the minutes of the meeting.

The COURT: Objection overruled.

Mr. ELKUS: Exception.

"A. Yes, sir, they did act.

"Q. Will you state what action was taken upon that resolution?"

Mr. ELKUS: I make the same objection.

The COURT: Objection overruled.

Mr. ELKUS: Exception.

"A. The resolution was voted upon and unanimously carried.

"Q. In this record mention is made of the call. What is meant by that?"

Mr. ELKUS: I object to that as calling for his conclusion, and as incompetent, immaterial and irrelevant.

Mr. TRASK: I will withdraw that.

"Q. State whether or not the corporation continued to carry on its business after May 10, 1904?"

Mr. ELKUS: I object to that.

The COURT: We had that once.

"Q. I call witness' attention to the book, marked Plaintiff's Exhibit 3, and ask whether he is able to identify this book.

A. I am.

"Q. What is it?"

Mr. ELKUS: I object to that. The book speaks for itself.

Mr. TRASK: This is only preliminary.

The COURT: You want this as proof that the defendant is a stockholder?

Mr. TRASK: Yes.

80 Mr. ELKUS: I object to it as incompetent, immaterial and irrelevant and no proper foundation laid.

The COURT: Objection overruled.

Mr. ELKUS: Exception.

"A. It is the stock book or record of the preferred stock of the corporation.

"Q. Did the corporation keep any other stock book?"

Mr. ELKUS: I make the same objection.

The COURT: Objection overruled.

Mr. ELKUS: Exception.

"A. Yes, sir, a common stock book in which the record was kept of the common stock.

"Q. Was the record of the preferred stock kept in this book?"

Mr. ELKUS: I object to that as incompetent, irrelevant and immaterial. The book speaks for itself and is the best evidence.

The COURT: Objection overruled.

Mr. ELKUS: Exception.

"A. Yes sir.

"Q. State whether or not you have seen the book before?

"A. I have.

"Q. State whether or not the corporation kept any other records of the preferred stock than the one in your hand?"

Mr. ELKUS: I object to that on the ground that the witness is not shown to have such knowledge that he can testify.

Mr. TRASK: I will withdraw that, and go back, and read a portion that I have omitted.

"Q. I call attention to Plaintiff's Exhibit 1, particularly to

81 Article 5 of the articles of incorporation where the name William A. Alden is expressed, and ask whether or not you are the William A. Alden there named.

"A. I am.

"Q. You were a member then of the first Board of Directors?

A. Yes, sir.

"Q. State whether or not any person was ever appointed to succeed you in your office as director prior to February 25, 1905?

A. No, sir, there was not.

"Q. I call your attention to the minute book marked for identification as Plaintiff's Exhibit 2, and ask you if it contains the bylaws of the corporation?

A. Yes, sir, it does.

"Q. In what part?

A. The front part.

"Q. Name the pages on which the bylaws are found.

A. 5-7-9-11.

"Q. State whether or not they are the original bylaws."

The COURT: I thought you were going to make some proof of his actual part in the management of the business, that he kept track of the books or something of that sort.

Mr. TRASK: Here it is on page 14, right where I stopped reading.

"Q. State whether or not you have seen the book, plaintiff's exhibit 3, before?

A. I have.

"Q. Where?

A. Among the books of the corporation.

"Q. When you saw it among the books of the corporation, where was it?

A. On the fourth floor in the place of business of the corporation.

"Q. Did you see it there frequently?

A. Yes, sir.

82 "Q. State to what extent, if any, you acted as the manager of the corporation.

A. I acted as the director of the company, and the directors were the managers and officers of the company.

"Q. And what did you do in this regard?

A. I attended the meetings of the directors and discussed the management of the business with the other directors.

"Q. In whose handwriting is this stock-book, plaintiff's Exhibit 3?

A. The Secretary's.

"Q. How many different handwritings is the record kept in?

A. Three.

"Q. Give the names?

A. A. V. Hamburg, Adam Pickering, William E. Johnson.

"Q. State whether or not you had occasion while director of the corporation to examine this stock-book?

A. I did.

"Q. Are you acquainted with the method of the keeping record of the issue of the stock book?

A. Yes, sir.

"Q. Explain briefly the method.

A. The certificate and stub are separated by a perforated line put there for the purpose of detaching the certificate from the stub when issued. The certificate is filled out with the share number and the number of shares issued in any one certificate, the name of the party to whom it is issued, is written in, and also the number of shares, the date is filled in, and the same is signed by the secretary and by the president, and the stub filled out to correspond and check with the certificate itself.

"Q. The stub would then contain the record of the issuance of the stock represented by the certificate?

83 Mr. ELKUS: I object to that on the ground that it speaks for itself.

The COURT: Objection sustained.

Mr. TRASK: Now I will come back to that question.

"Q. State whether or not the corporation kept any other records of the preferred stock than the one in your hand?"

The COURT: I will take it.
Mr. ELKUS: Exception.

A. No, sir.
"Q. At the top of this record on stub 6 and above the printed word certificate, is found the word in writing 'Pd.' Do you see that?
A. Yes, sir.
"Q. In whose writing are those letters 'Pd.'?
A. A. V. Hamburg's, secretary.
"Q. State what that entry 'Pd.' refers to, if you know.

Mr. ELKUS: I object to what the words 'Pd.' refer to.
The COURT: Objection sustained.
Mr. TRASK: It is admitted that they paid for the stock anyway.

"Q. What, if anything, was done with the certificate corresponding to stub 6?"

Mr. ELKUS: I object to that as calling for a conclusion.
The COURT: Objection overruled.
Mr. ELKUS: Exception.

"A. At the time it was issued it was mailed to Arthur L. Selig in New York with a letter requesting him to send check or draft for $5000 in payment of same.
84 "Q. How do you know that this disposition was made of the certificate?
A. Because all of the first lot of certificates issued, among which was this one, were handled in the same manner.
"Q. Was that within your personal knowledge?
A. It was.
"Q. About how many other certificates were issued on or about the date of this one?"

Mr. ELKUS: All of these questions are taken subject to my objection and exception?
The COURT: I don't see, Mr. Trask, why you need bother with this. I understand you that the defendant states that he was at one time a stockholder.

"Q. I call your attention to entries on stub 6 written in pen 'S. Eisman & Co., 71 Grand St.' In whose handwriting is that?"

Mr. ELKUS: I object to those words going into evidence, as incompetent, immaterial and irrelevant, and as not binding on us.
The COURT: It is not taken in evidence except to show that the words were written.

"A. Willian E. Johnson, secretary.
"Q. Can you explain that entry?"

Mr. ELKUS: I object to his explanation of the entry.
Mr. TRASK: I withdraw the question. I offer in evidence the record of the issuance of the 50 shares mentioned in the complaint to Arthur L. Selig, the defendant as shown on stub 6 of the stock book, which I now offer in evidence.

Mr. ELKUS: I object to that record going in evidence. Do you offer the certificate?

Mr. TRASK: No, I offer the stub.

85 Mr. ELKUS: Not what is annexed to the stub? Is that it? I call your Honor's attention to the fact that the stub is not there alone, that attached to the stub is some paper.

The COURT: The certificate cancelled I suppose?

Mr. ELKUS: The cancelled certificate.

The COURT: The stock ledger would be the best evidence. There isn't any stock record, and next to that would be the certificate, would it not? The stub of the certificate won't show, that is not a record of the stockholders.

Mr. TRASK: I will enlarge my offer. I offer in evidence the record of the issuance of this stock, 50 shares, to the defendant, Selig, as found on stub 6 of the stock book, together with the original certificate which appears to have been returned and attached to the stub. I desire to say in explanation of plaintiff's position with reference to the return of the certificate, and also with reference to the words written on the stub, "Cancelled and transferred September 5, 1904," that it is alleged in the petition for assessment, and alleged in the petition in this action, that the transfer was merely colorable, and therefore void, and that the plaintiff's claim here is that the question of the fraudulent character of the transfer was before the Minnesota courts and determined there, and is not open for determination here.

The COURT: What you offer is the certificate of stock and the stub?

Mr. ELKUS: I object to it as incompetent, immaterial and irrelevant and no proper foundation laid for it, to entitle it to be put in evidence here. It has not been identified in any way. I object specifically to the certificate or the stub being marked in evi-

86 dence upon the ground that it is no proof of the facts purported to be stated therein, and I object specifically to that portion of the certificate going in bearing the words,—"S. Eisman & Company, 71 Grand Street", written in ink, on the ground that we are not bound by any such entry; I object specifically to the papers being admitted in evidence with any modification or explanation or withdrawal as to the facts, which counsel has attempted to make.

The COURT: Oh yes, that is nothing but argument. That does not qualify it. I will take the two papers.

Mr. ELKUS: Exception.

Papers received in evidence and marked Plaintiff's Exhibit 9.

Mr. TRASK: It is admitted that the plaintiff is a resident of the State of Minnesota.

The COURT: A citizen.

Mr. TRASK: Citizen and resident both. It is admitted that the defendant is a citizen and resident of the State of New York. These allegations are in the first paragraph and they are not denied. It is also admitted that a demand was made upon the defendant to pay the assessment, and that the demand was refused. That is alleged in one of the last paragraphs and not denied.

Mr. ELKUS: I want some cross-examination of this witness.
Mr. TRASK: There is no cross-examination.
Mr. ELKUS: I will read it from his direct.

"Q. You may state whether or not certificate No. 6 was returned at any time?"

87 Mr. TRASK: I object to that on the ground that it was alleged in the complaint in the action to wind up the corporation that the alleged transfer was fraudulent and colorable. The same allegation was contained in the petition for assessment. It appears from the record that a large portion of the indebtedness arose prior to September 5, 1904, the date of the alleged transfer, and the question as to the validity of the alleged transfer must have been before the Minnesota Court, because it appears clearly that this defendant was a person who was subject to the Minnesota liability, and that he was before the Court, as cannot be successfully denied. Therefore, the questions which were before the Minnesota court with reference to the character of that transfer must have been determined there.

The COURT: Objection overruled.
Mr. TRASK: Exception.

"A. Yes, sir, it was. The records show that it was returned on Sept. 25, 1904, and pasted to the stub and certificate No. 62 for 50 shares was issued to Max Mayer of New York City.
"Q. Where is the record of the issuance of the 50 shares to Max Mayer?
"A. It is found on stub 62."

Mr. ELKUS: I offer in evidence stub 62 from the same book.
Mr. TRASK: I make the same objection.
The COURT: Objection overruled.
Mr. TRASK: Exception.
Paper received in evidence and marked Defendant's Exhibit A.
Plaintiff rests.

88 Mr. ELKUS: I move to dismiss the complaint upon the ground that the plaintiff has failed to prove sufficient facts to constitute a cause of action; has failed to prove the allegations of the complaint, and I move again upon the ground that this action is in equity and not at law, and therfore is not properly before the court here, and should be dismissed.

The COURT: Motion denied.
Mr. ELKUS: Exception.
Mr. ELKUS: I move to dismiss upon the ground that this cause of action had accrued more than three years prior to the commencement of this action and was therefore barred by the Statute of Limitations of the State of New York.
The COURT: Motion denied.
Mr. ELKUS: Exception.
Defendant rests.
Mr. ELKUS: I renew my motion to dismiss the complaint upon the same grounds, and move the court to direct a verdict, upon the ground that the defendant is entitled to a verdict on all the evi-

dence, upon the same grounds mentioned in the motion to dismiss the complaint.

Mr. TRASK: Plaintiff moves the court to direct a verdict in favor of the plaintiff, on the ground that on the evidence the plaintiff is entitled to a verdict.

89 United States District Court, Southern District of New York.

CHARLES E. HAMILTON, as Receiver of Evans, Johnson, Sloane Company, a Corporation, Plaintiff,
against
ARTHUR L. SELIG, Defendant.

It is hereby stipulated and agreed that the foregoing Bill of Exceptions contains all the proceedings had and testimony taken upon the trial of this action, and we hereby consent that the same be signed and filed nunc pro tunc as of Apr. 15, 1912.

Dated, New York, June 18, 1912.

JOHN J. CLARK,
Attorney for Plaintiff.
JAMES, SCHELL & ELKUS,
Attorneys for Defendant.

90 United States District Court, Southern District of New York.

CHARLES E. HAMILTON, as Receiver of Evans, Johnson, Sloane Company, a Corporation, Plaintiff,
against
ARTHUR L. SELIG, Defendant.

The foregoing bill of exceptions, containing all the proceedings had and the testimony taken upon the trial of this action is hereby approved, allowed and settled, and made a part of the record herein, the exhibits received in evidence are to be regarded as a part hereof and to be printed in the transcript.

Dated this 28th day of June, 1912.

LEARNED HAND, *Judge.*

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Jul- 3, 1912.

91 *Stipulation Settling Exhibits and Manner of Printing.*

United States District Court, Southern District of New York.

CHARLES E. HAMILTON, as Receiver of Evans, Johnson, Sloane Company, a Corporation, Plaintiff,
against
ARTHUR L. SELIG, Defendant.

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the following are the exhibits admitted in evidence upon the trial of this action and that they shall be printed in the record on appeal as follows:

Plaintiff's Exhibit I.

This is the exemplified record of the Articles of Incorporation of the Evans-Munzer-Pickering Company and a certificate of amendment thereof from the office of the Secretary of the State of Minnesota; to be printed in full.

Plaintiff's Exhibit II.

This is an exemplified copy of the Articles of Incorporation of the Evans-Munzer-Pickering Company and an amendment thereof from the office of the Register of Deeds of Hennepin County, State of Minnesota. Print from beginning to the commencement of the copy of the Articles of Incorporation.

After the words "Articles of Incorporation" on page 1,
92 print: "Same as Articles of Incorporation contained in Plaintiff's Exhibit I, reprinting of said Articles is waived."

After the words "Doc. No. 586618. Filed May 12, 1904, at 10 ¼ o'clock A. M. Amendment of the Articles of Incorporation of Evans-Munzer-Pickering Company" print: "Same as the amendment of said Articles of Incorporation contained in Plaintiff's Exhibit I. Reprinting same is waived."

Begin at "And I do further certify * * *" and continue to end.

Plaintiff's Exhibit III.

This is the exemplified record of the proofs of publication of the Articles of Incorporation of Evans-Munzer-Pickering Company and the amendment thereof, from the office of the Secretary of the State of Minnesota. Print from beginning to commencement of copy of Articles of Incorporation on page 2.

After the title: "Articles of Incorporation, Evans-Munzer-Pickering & Co." on page 2, print: "Same as Articles of Incorporation and certificates of time of filing in the office of the Secretary of State and

in the office of the Register of Deeds of Hennepin County, contained in Plaintiff's Exhibit I, reprinting same is waived."

Print the affidavit of publication.

After the title: "Amendment of the Articles of Incorporation of Evans-Munzer-Pickering Company" print: "Same as the amendment of the Articles of Incorporation contained in Plaintiff's Ex-
93 hibit I, reprinting same is waived." Begin at

"STATE OF MINNESOTA,
Department of State:

I hereby certify the within etc." and continue to end.

Plaintiff's Exhibit IV.

Order of adjudication in bankruptcy print in full.

Plaintiff's Exhibit VI.

Record of the action in the District Court of Minnesota. County of Ramsey, of Marshall, Field & Company vs. Evans-Johnson-Sloane & Company, to be printed as otherwise provided.

Plaintiff's Exhibit VII.

Print entire record of Meeting of Directors as found on page 40 of the minute book of the corporation.

Plaintiff's Exhibit VIII.

Print entire record of Meeting of Stockholders found on page 42 of the minute book of the corporation.

Plaintiff's Exhibit IX.

Print stub 6 of the stock book and the stock certificate thereto attached.

Defendant's Exhibit A.

Print stub 62 of the Stock Certificate book.

Dated New York, July 15th 1912.

JOHN J. CLARK,
Attorneys for Charles E. Hamilton, Defendant in Error.
JAMES, SCHELL & ELKUS,
Attorneys for Arthur L. Selig, Plaintiff in Error.

(Endorsed:) Rec'd by mail 9 A. M. July 1/12. J. J. C.

94 PLAINTIFF'S EXHIBIT I.

UNITED STATES OF AMERICA,
State of Minnesota, Department of State:

I, Julius A. Schmahl, Secretary of State of the State of Minnesota, do hereby certify that upon examination of the records in the office of the Secretary of State of the State of Minnesota, I do *there* find there existing a record of the Articles of Incorporation of Evans, Munzer, Pickering and Company, as recorded in said office of said Secretary of State, in Book B3 of Incorporation on page 636, and also a record of Certificate of Amendment to said Articles of Incorporation of Evans, Munzer, Pickering and Company, as recorded in said office in Book H3 of Incorporations on page 399, and that said record of said Articles of Incorporation and said record of said Certificate of Amendment to said Articles of Incorporation are, respectively, in the following words and figures, viz:

Articles of Incorporation Evans, Munzer, Pickering & Company.

We, the undersigned, do hereby associate ourselves together to constitute a body corporate under the name herein assumed by us for the purpose of engaging in and carrying on the business set forth in these articles of incorporation by adopting and signing such articles according to the provisions of title two (2) chapter thirty-four (34) of the General Statutes 1878 of the State of Minnesota, and all acts amendatory thereof.

Article I.

The name of the corporation hereby constituted is the "Evans, Munzer, Pickering & Company." The general nature of its business shall be to buy, sell, trade, manufacture and deal in goods, wares and merchandise of every kind and nature, including the
95 acquisition by purchase, manufacture or otherwise of all goods, materials, supplies and other articles necessary or convenient for use in connection with and in carrying on the business herein mentioned; and to lease and sublet stores, storerooms for any time or manner of rental for the sale or manufacture of such goods, wares and merchandise, and to do all things necessary or convenient thereto.

The principal place of the transaction of the business of said corporation shall be the city of Minneapolis, County of Hennepin and State of Minnesota.

Article II.

The time of the commencement of said corporation shall be the nineteenth day of April, 1902, and the period of its continuance shall be thirty (30) years.

Article III.

The amount of capital stock of said corporation shall be two hundred and fifty thousand ($250,000) dollars of which one hundred thousand ($100,000) dollars shall be preferred stock and one hundred and fifty thousand ($150,000) dollars shall be common stock. The common stock shall be subordinate to the rights of preferred stock except that said common stock only shall have voting powers, and the corporation shall not be at liberty to create or issue any other stock ranking in priority to the aforesaid issue of preferred shares, nor to create any charge other than current liabilities, except as herein provided, upon the net profits of the corporation, which shall not be subordinate to the rights of the preference shares, nor to reserve a surplus fund which shall not be chargeable with the payment of the accrued dividends on said preference shares. The said preferred stock shall carry a fixed cumulative preferential dividend at the rate of, but never exceeding eight (8%) per cent per annum on the par value thereof out of the net profits of the business
96 of said corporation, and such dividends shall, if earned, be declared annually and at such other times as the board of directors shall determine. And if in any year dividends amounting to eight (8) per cent per annum shall not be paid on such preferred stock, the deficiency shall be a charge on the net profits and be payable without interest before any dividends shall be paid upon or set apart for the common stock. The balance of the net profits of the corporation after such payment of eight (8) per cent upon said preferred stock may be distributed as dividends among the holders of the common stock as and when the board of directors shall in their discretion determine.

In the event of the liquidation or dissolution of said corporation, the surplus assets and funds thereof shall be applied in the first place in repaying to the holders of the aforesaid cumulative preference shares the full amount of the principal thereof, and the accrued dividends, if any, before any amount shall be paid upon the common stock, and after such payment in full to the holders of said cumulative preference shares, the surplus, assets and funds shall belong to and be divided among the holders of the common shares.

The common stock shall be paid in full before said corporation shall begin business, and the preferred — shall be issued at such times and in such amounts as the board of directors shall determine, but shall not be sold for less than the par value thereof.

Article IV.

The highest amount of indebtedness or liability to which said corporation shall at any time be subject shall be two hundred and fifty thousand ($250,000) dollars.

Article V.

The names and places of residence of the persons forming such association for incorporation are John F. Evans, Rudolph W.
97 Munzer, Adam Pickering, William A. Alden, John F. Elwell, Alfred V. Hamburg, and Charles B. Holmes, all of Minneapolis, Minnesota.

Article VI.

The names of the first board of directors are John F. Evans, Rudolph W. Munzer, Adam Pickering, William A. Alden, John F. Elwell, Alfred V. Hamburg, and Charles B. Holmes, all of whom shall hold office until the first annual meeting of the company.

The government of said corporation and the management of its affairs shall be vested in a board of seven (7) directors who shall be stockholders and shall be elected annually by the stockholders at their annual meeting for the term of one year. The said annual meeting shall be held at the principal place of business of said corporation on the third Tuesday in August, at 8 o'clock P. M.

At all meetings of the board of directors a majority thereof shall constitute a quorum to do business but a less number may adjourn from time to time.

The officers of said corporation shall be a president, vice-president, secretary and treasurer, and such officers shall be elected by the board of directors from their number immediately after the annual meeting of the stockholders in each year. If for any reason there shall be a failure to elect directors or officers at the time above specified, such election may be held at any adjourned meeting or at any subsequent regular or special meeting of said stockholders or directors respectively. Said directors and officers shall hold their offices for the term of one year or until their successors are elected and qualified.

Any vacancy in said board of directors shall be filled by the remaining members until the next annual meeting. The board of directors shall have power to appoint such other officers and
98 agents and designate their duties, as they shall deem necessary for the proper conduct of the business of said corporation, and may, in their discretion, make, alter and rescind such by-laws, rules and regulations touching the management of the affairs of said corporation as shall not be contrary to the provisions hereof or to law.

And said board shall have the power without the assent or vote of the stockholders, subject always to the payments of the dividends on the preferred stock, to fix the amount to be reserved as working capital, and with the assent in writing of, or pursuant to vote of, three-fourths (¾) of all of the stock irrespective of class issued and outstanding, said board of directors shall have power and authority to sell, assign, transfer, convey or otherwise dispose of the property and assets of this corporation as an entirety on such terms and conditions as the directors shall deem fit, right and just.

Article VII.

The number of shares of the capital stock of said corporation shall be one thousand five hundred (1500) shares of common stock and one thousand (1000) shares of preferred stock, and the amount of each share shall be one hundred (100) dollars.

In witness whereof, we have hereunto set our hands and seals, this eighteenth day of April, A. D. 1902.

JOHN F. EVANS. [SEAL.]
RUDOLPH W. MUNZER. [SEAL.]
ADAM PICKERING. [SEAL.]
WILLIAM A. ALDEN. [SEAL.]
JOHN F. ELWELL. [SEAL.]
ALFRED V. HAMBURG. [SEAL.]
CHARLES B. HOLMES. [SEAL.]

In the presence of
EBEN S. MARTIN,
SAMUEL L. BAKER.

99 STATE OF MINNESOTA,
County of Hennepin, ss:

On this eighteenth day of April, A. D. 1902, before me personally appeared John F. Evans, Rudolph W. Munzer, Adam Pickering, William A. Alden, John F. Elwell, Alfred V. Hamburg and Charles B. Holmes, to me known to be the persons described in and who executed the foregoing instrument, and who acknowledged that they executed the same as their free act and deed.

[NOTARIAL SEAL.] SAMUEL L. BAKER,
Notary Public, Hennepin County, Minnesota.

342971.

OFFICE OF REGISTER OF DEEDS,
State of Minnesota,
County of Hennepin:

I hereby certify that the within Inst. was filed for record in this office on the 19th day of April, A. D. 1902, at 10¼ o'clock A. M., and was duly recorded in Book — of — page —.

GEO. C. MERRILL,
Register of Deeds,
By A. W. SKOG, *Deputy.*

Filed for record in this office the 19th day of April, A. D. 1902, at 11 A. M.

P. E. HANSON,
Secretary of State.

100 We hereby certify that at a meeting of the stockholders of Evans, Munzer, Pickering & Company, duly called and held at the office of said corporation in the City of Minneapolis, Hennepin County, Minnesota, on the 10 day of May, 1904, Articles I and VI of the original articles of incorporation of said corporation were amended, changing the name of said corporation to "Evans, Johnson, Sloan Co." and the number of directors to five as stated in the following resolutions which were voted for and adopted by more than two-thirds in number of the stockholders and shares of stock of

said corporation, and that no votes were cast against said amendments.

"Resolved that Article One (1) of the Articles of Incorporation of this corporation so far as the same states the name of said corporation be amended so as to read as follows:—'The name of this corporation shall be Evans, Johnson, Sloan Co.'"

"Resolved that Article Six (VI) of the Articles of Incorporation of this corporation be amended so far as the same fixes the number of directors so as to read as follows:—'The government of said corporation and the management of its affairs shall be vested in a board of five directors who shall be stockholders, and shall be elected annually by the stockholders at their annual meeting.'"

J. F. EVANS, *President;*
WILLIAM E. JOHNSON, *Secretary.*

STATE OF MINNESOTA,
County of Hennepin, ss:

John F. Evans and William E. Johnson, being by me first duly and severally sworn, on oath state, each for himself, that he is the president and secretary respectively of the corporation Evans,
101 Munzer, Pickering & Company, and that the facts stated in the foregoing certificate are true of his own knowledge.

J. F. EVANS. *Pres.*
WILLIAM E. JOHNSON.

Subscribed and sworn to before me, this 10th day of May, 1904.
[NOTARIAL SEAL.] F. H. CARPENTER,
Notary Public, Hennepin County, Minnesota.

Filed for record in this office May 14, A. D. 1904, at 9 o'clock A. M.

P. E. HANSON,
Secretary of State.

102 And I do further certify that I have carefully compared the above and foregoing copy of articles of incorporation of Evans Munzer Pickering and Company with the record thereof as recorded in said office of said Secretary of State in said Book B3 of Incorporations on page 636, and that the same is a true and correct copy and transcript of said original record and of the whole thereof; and that I have carefully compared the above and foregoing copy of said Certificate of Amendment to said Articles of Incorporation with the original record thereof as recorded in said Book H3 of Incorporations on page 399, and that the same is a true and correct copy and transcript of said original record and of the whole thereof. And I do further certify that I am the officer in whose custody said records, and each thereof, is required by law to be kept.

In testimony whereof I have hereunto set my hand and affixed the Great Seal of the State of Minnesota, at the Capitol of said State, at St. Paul, Minnesota, this 24th day of April, 1908.

[The Great Seal of the State of Minnesota, 1858.]

JULIUS A. SCHMAHL,
Secretary of State of the State of Minnesota.

103 STATE OF MINNESOTA,
Department of State:

I, John A. Johnson, Governor of the State of Minnesota, do hereby certify that Julius A. Schmahl, who makes the foregoing attestation, was, at the date thereof, and is the Secretary of State of the State of Minnesota, that the foregoing attestation of said Julius A. Schmahl, Secretary of State, is by the proper officer and in due form, that I am well acquainted with his hand writing and that the signature attached thereto is genuine.

In witness whereof, I have hereunto set my hand and affixed the Great Seal of the State of Minnesota, at the Capitol, in St. Paul, this 24 day of April, A. D. Nineteen Hundred and Eight.

[The Great Seal of the State of Minnesota, 1858.]

JOHN A. JOHNSON,
Governor of the State of Minnesota.

104 STATE OF MINNESOTA,
Department of State:

I, Julius A. Schmahl, Secretary of State of the State of Minnesota, do hereby certify that the Honorable John A. Johnson is the Governor of the said State of Minnesota, duly elected, commissioned, qualified and acting, and was such Governor at the date of the foregoing certificate, that I am well acquainted with his signature, and that the signature thereto attached is genuine.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of the State of Minnesota, at the Capitol of said State in St. Paul, this 24th day of April, 1908.

[The Great Seal of the State of Minnesota, 1858.]

JULIUS A. SCHMAHL,
Secretary of State of Minnesota.

105 PLAINTIFF'S EXHIBIT H.

UNITED STATES OF AMERICA,
State of Minnesota,
County of Hennepin:

I, August W. Skog, Register of Deeds in and for the County of Hennepin and State of Minnesota, do hereby certify that upon examination of the records in the office of the Register of Deeds in and for said Hennepin County, Minnesota, I do there find existing a record of the Articles of Incorporation of Evans, Munzer, Pickering and Company, as recorded in said office of said Register of Deeds in Book 91 of Miscellaneous on page 71, &c.; and also a record of Certificate of Amendment to said Articles of Incorporation of Evans, Munzer, Pickering and Company as recorded in said office in Book 100 of Miscellaneous on page 244, &c., and that said record of said Articles of Incorporation and said record of said Certificate of

Amendment to said Articles of Incorporation are, respectively, in the following words and figures, viz:

Doc. No. 342971 Filed Apl. 19, 1902, at 10¼ o'clock A. M.

(Same as Articles of Incorporation contained in Plaintiff's Exhibit 1, reprinting of said Articles is waived.)

Doc. No. 386618. Filed May 12th, 1904, at 10¼ o'clock A. M. Amendment of the Articles of Incorporation of Evans, Munzer, Pickering & Company.

(Same as the amendment of said Articles of Incorporation contained in Plaintiff's Exhibit 1. Reprinting same is waived.)

And I do further certify that I have carefully compared the above and foregoing Copy of Articles of Incorporation of Evans, Munzer, Pickering and Company with the record thereof as recorded in said office of said Register of Deeds in said Book 91 of Miscellaneous on page 71, &c., and that the same is a true and correct
106 copy and transcript of said original record and of the whole thereof; and that I have carefully compared the above and foregoing copy of said Certificate of Amendment to said Articles of Incorporation with the original record thereof as recorded in said Book 100 of Miscellaneous on page 244, and that the same is a true and correct copy and transcript of said original record and of the whole thereof. And I do further certify that I am the officer in whose custody said records and each thereof, is required by law to be kept.

In testimony whereof I have hereunto set my hand at Minneapolis, in said Hennepin County, this second day of October, A. D. 1910.

[SEAL.]

AUGUST W. SKOG,
Register of Deeds.

STATE OF MINNESOTA,
County of Hennepin, ss:

I, Horace D. Dickinson, Presiding Judge of the District Court for the Fourth Judicial District in and for the County of Hennepin and State of Minnesota, the same being a Court of Record, do hereby certify that August W. Skog, who makes the foregoing attestation, is and at the time said attestation was made, was the Register of Deeds in and for said Hennepin County; that the foregoing attestation by August W. Skog, as Register of Deeds of said County, is by the proper officer and in due form as required by law; that I am acquainted with said August W. Skog, and with his handwriting, and that the signature attached to said attestion is genuine.

In testimony whereof, I have hereunto set my hand, this 3rd day of October, 1910.

HORACE D. DICKINSON,
District Judge.

107 STATE OF MINNESOTA,
County of Hennepin, ss:

I, A. E. Allen, Clerk of the District Court for the Fourth Judicial District in and for the County of Hennepin and State of Minnesota, do hereby certify that the Honorable Horace D. Dickinson, who

signed the foregoing Certificate as the Judge of said Court, is Presiding Judge of said District Court, duly commissioned and qualified, and was such Judge at the date of the foregoing Certificate; that I am acquainted with said Judge and with his handwriting, and that the signature attached to said Certificate is genuine.

In testimony whereof I have hereunto set my hand and the seal of said District Court at Minneapolis, in said Hennepin County, this 3rd day of October, A. D. 1910.

[SEAL.] A. E. ALLEN,
Clerk of the District Court of said Hennepin County.

108 PLAINTIFF'S EXHIBIT III.

UNITED STATES OF AMERICA,
State of Minnesota, Department of State:

I, Julius A. Schmahl, Secretary of State of the State of Minnesota, do hereby certify that upon examination of the records and files in the office of the Secretary of State of the State of Minnesota, I do find there existing a certain original Affidavit of Publication of the Articles of Incorporation of Evans, Munzer, Pickering and Company, which affidavit of publication was filed in said office on the 24th day of April, 1902, and has ever since been and now is kept on file in said office as number 6410; that I also find there existing a certain original Affidavit of Publication of the Certificate of Amendment to said Articles of Incorporation, which last mentioned affidavit of publication was filed in said office on the 1st day of June, 1904, and has ever since been and now is kept on file in said office as number 7830; and that said original Affidavit of Publication of said Articles of Incorporation, and said original affidavit of Publication of said Certificate of Amendment thereto, are, respectively, in the following words and figures, viz:

Articles of Incorporation, Evans, Munzer, Pickering & Company.

(Same as Articles of Incorporation and certificates of time of filing in the office of the Secretary of State and in the office of the Register of Deeds of Hennepin County, contained in Plaintiff's Exhibit 1, reprinting same is waived.)

109 *Affidavit of Publication.*

STATE OF MINNESOTA,
County of Hennepin, ss:

J. A. Werner, being duly sworn, deposes and says that he now is, and during all the time herein mentioned has been in the employ of the printer and publisher of the newspaper known as "The Minneapolis Times" and during all said time, was and now is, the foreman of said newspaper, that said newspaper "The Minneapolis Times, was during all said time, and still is, a daily newspaper

printed and published at the City of Minneapolis, in the county of Hennepin, in the state of Minnesota, on each and every day of the week; that the annexed printed notice of articles of incorporation hereto attached, and made a part hereof, was cut and taken from the columns of said newspaper, and was printed and published in said newspaper for two successive times; that said notice was first printed and published in said newspaper on Monday the twenty-first day of April, A. D. 1902, and was thereafter printed and published in said newspaper on each and every succeeding day until and including Tuesday the twenty-second day of April 1902; that said newspaper was, during all the time in this affidavit mentioned, and still is, a collection of reading matter in columns and sheet form, the matter consisting of general and local news, comments and miscellaneous literary items, printed and published in the English language on each and every day of each and every week at an established office and known place of business in said city, to-wit: Nos. 47 and 49 South Fourth Street, equipped with the necessary materials, newspaper presses and skilled workmen for preparing, printing and publishing the same, and the whole thereof in said city; that the said newspaper was, during all said time, and still is dated
110 at Minneapolis and generally circulated in said city and county; that said newspaper for more than one year next preceding the date of the first publication of said notice, and during all the time of said publication, was printed in whole, and published and circulated in said county; that during all said time said newspaper has consisted of more than the equivalent in space of four pages, of more than five columns to each page, each column not less than seventeen and three-fourths inches long; that during all said time said printer and publisher of said "The Minneapolis Times" has printed, published and delivered at each regular issue, not less than two hundred and forty complete copies of said newspaper to paying subscribers; that said newspaper, during said time, has never been a duplicate, and that during said time said newspaper has never been made up wholly of patents, or plates and patents and advertisements, or either or any of them.

That on the 10th day of May, 1893, the publisher of said newspaper filed with the county auditor of said Hennepin county, an affidavit setting forth the facts required by section 2 of chapter 33 of the general laws of the state of Minnesota for the year 1893.

That affiant knows personally all the facts set forth in this affidavit, and that each and all thereof are true.

J. A. WERNER.

Subscribed and sworn to before me, this 22nd day of April, A. D. 1902.

[NOTARIAL SEAL.] JOHN T. JONES,
Notary Public, Hennepin County, Minnesota.

6410.

Filed April 24, 1902.
P. E. HANSON,
Sec'y of State.

111 *Amendment to Articles of Incorporation of Evans, Munzer, Pickering & Company.*

(Same as the amendment of the Articles of Incorporation contained in Plaintiff's Exhibit 1, reprinting same is waived.)

STATE OF MINNESOTA,
Department of State:

I hereby certify that the within instrument was filed for record in this office on the 14th day of May, A. D. 1904, at 9 o'clock A. M., and was duly recorded in Book H3 of Incorporations, on page —.

P. E. HANSON,
Secretary of State.

OFFICE OF REGISTER OF DEEDS,
State of Minnesota, County of Hennepin:

I hereby certify that the within instrument was filed for record in this office on the 12 day of May, A. D. 1904, at 10¼ o'clock A. M., and was duly recorded in Book — of — page —.

GEO. C. MERRILL,
Register of Deeds,
By A. W. SKOG,
Deputy Register of Deeds.

112 STATE OF MINNESOTA,
County of Hennepin, ss:

Came personally before me, G. L. Covell, and being duly sworn, deposes and says that he now is and during all the time hereinafter mentioned has been the manager and printer of The Weekly Mirror, a weekly newspaper printed and published in Minneapolis in said Hennepin County on Saturday of each week. That he knows of his own knowledge that the printed notice of amendment hereto attached, cut from the columns of said newspaper, was inserted, printed and published in said newspaper once in each week for two successive weeks, and that all of said publications were made in the English language. That said notice was first inserted, printed and published in said newspaper on Saturday the 21st day of May 1904, and was printed and published therein on each and every Saturday thereafter until and including Saturday the 28th day of May 1904; that during all the time aforesaid said newspaper was a collection of general and local news, comments and miscellaneous literary items, and regularly issued and published on Saturday of each week from a known office of publication, said office being equipped with the necessary materials, excepting newspaper presses and skilled workmen for producing the same, and has consisted of not less than four pages, of five columns or more to each page, each column not less than seventeen and three-fourths inches in length, and never made up wholly of patents, plates and advertisements, or either or any of them, and has not been substantially a duplicate of any

other newspaper, and has been regularly printed, published and delivered at each regular issue each week to more than two hundred and forty said subscribers, and that said newspaper, composed and consisting as above set forth, was printed and published in the
113 English language weekly and generally circulated in Hennepin county for more than one year next preceding the date of the first publication of said notice. And said newspaper is now admitted and for more than one year year last past has been admitted to the United States mail as second-class matter. That the publisher of said newspaper, prior to the date of the publication of said notice, filed with the county auditor of said Hennepin county, an affidavit setting forth the facts required by section 2, chapter 33, of the laws of the state of Minnesota for 1893.

G. L. COVELL,

Subscribed and sworn to before me this 28th day of May 1904.

[NOTARIAL SEAL.] F. E. COVELL,
Notary Public, Hennepin County, Minn.

No. 7830.

Filed June 1, 1904.
P. E. HANSON,
Sec'y of State.

And I do hereby also certify that I have carefully compared the above and foregoing copy of said Affidavit of Publication of said Articles of Incorporation with the said original on file in my said office, and that said copy is a true and correct transcript and copy of said original and of the whole thereof; that I have carefully compared the above and foregoing copy of said Affidavit of Publication of said Certificate of Amendment to said Articles of Incorporation with the said original on file in my said office, and that said copy is a true and correct transcript and copy of said original and of the whole thereof. And I do further certify that I am the officer in whose custody said affidavits of publication and the said
114 files thereof, and each thereof, are required by law to be kept.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of the State of Minnesota, at the Capitol, at St. Paul, Minnesota, this 19th day of March, A. D. 1908.

[The Great Seal of the State of Minnesota, 1858.]

JULIUS A. SCHMAHL,
Secretary of State of the State of Minnesota.

STATE OF MINNESOTA,
Department of State:

I, John A. Johnson, Governor of the State of Minnesota, do hereby certify that Julius A. Schmahl, who makes the foregoing attestation, was at the date thereof and is the Secretary of State of the State of Minnesota, that the foregoing attestation of said Julius

A. Schmahl, Secretary of State, is by the proper officer and in due form, that I am well acquainted with his hand writing and that the signature attached thereto is genuine.

In witness whereof, I have hereunto set my hand and affixed the Great Seal of the State of Minnesota at the Capitol, in St. Paul, this 19th day of March, A. D. Nineteen Hundred and Eight.

[The Great Seal of the State of Minnesota, 1858.]

JOHN A. JOHNSON,
Governor of the State of Minnesota.

STATE OF MINNESOTA,
Department of State:

I, Julius A. Schmahl, Secretary of State of the State of Minnesota, do hereby certify that the Honorable John A. Johnson is the Governor of the said State of Minnesota, duly elected, commissioned, qualified and acting, and was such Governor at the date of
115 the foregoing certificate, that I am well acquainted with his signature, and that the signature thereto attached is genuine.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of the State of Minnesota, at the Capitol of said State in St. Paul, this 19th day of March, 1908.

[The Great Seal of the State of Minnesota, 1858.]

JULIUS A. SCHMAHL,
Secretary of State of Minnesota.

116 PLAINTIFF'S EXHIBIT IV.

UNITED STATES OF AMERICA,
District of Minnesota, Fourth Division, ss:

I, Charles L. Spencer, Clerk of the United States District Court for the District of Minnesota, do hereby certify that I have carefully compared the copy attached to this certificate, with its original, which is in my custody as such Clerk, and that the said copy is a full, true and correct transcript from such original and of the whole thereof.

In testimony whereof, I have hereunto set my official signature as the clerk aforesaid and affixed the seal of said court at Minneapolis in the Fourth Division of said District this 21st day of June, A. D. 1910.

[SEAL.]

CHARLES L. SPENCER, *Clerk*,
By CLARA M. OWENS,
Deputy Clerk.

Adjudication of Bankruptcy.

United States District Court, District of Minnesota, Fourth Division.

In Bankruptcy.

In the Matter of EVANS, JOHNSON, SLOANE CO., a Corporation, Bankrupt.

At Minneapolis, in said District, on the 13th day of October, A. D. 1905, before the Honorable Page Morris, Judge of Said Court in Bankruptcy, the petition of Albert H. Lindeke, Albert W. Lindeke and Reuben Warner, copartners as Lindeke, Warner & Sons, W. E. Mayhew and Simon Lifpetz, that Evans, Johnson, Sloane Co.,
117 a corporation, be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said Evans, Johnson, Sloane Co., a corporation, is hereby declared and adjudged a bankrupt accordingly.

Witness the Honorable Page Morris, Judge of Said Court, and the seal thereof, at Minneapolis, in said district, on the 13th day of October, A. D. 1905.

[SEAL.] CHARLES L. SPENCER, *Clerk.*
By MARGARET C. NOONAN, *Deputy.*

118 *Stipulation Avoiding Duplication in Printing Plaintiff's Exhibit 6.*

United States District Court, Southern District of New York.

CHARLES E. HAMILTON, as Receiver of Evans, Johnson, Sloane Company, Plaintiff,
against
ARTHUR L. SELIG, Defendant.

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that in printing the plaintiff's exhibit 6, the exemplified record of the proceedings in the District Court of Ramsey County, Minn., the plaintiff-in-error under the title "Order as recorded in Book 21 of Decrees, page 7" on page 25 shall not print the copy of said record but shall merely print the words "Same as order appointing receiver, of June 25, 1906, immediately preceding."

That under the words "Exhibit A" on page 32, being Exhibit A of the affidavit of mailing of E. H. Morphy, the plaintiff-in-error shall not print the copy of the order of June 28, 1906, the order limiting the time for the filing of intervening complaints by creditors but shall merely print the words "Same as the order of June 28, 1906 limiting the time for filing of intervening complaints, immediately preceding."

That after the venue and the title of the case on page 39, being the exhibit attached to the affidavit of publication by W. H. Farn-
119 ham, the plaintiff-in error shall not print in the record on appeal the copy of the order of June 28th following but shall merely print the words "Same as order of June 28, 1906 limiting the time for filing of intervening complaints by creditors," page 31 of original, page 151 of certified record on appeal, page — of printed record on appeal.

That after "Exhibit A" referred to in the annexed affidavit on page 52, being the exhibit A attached to the proof of mailing by E. H. Morphy, the plaintiff-in-error shall not print the copy of the order of July 6, 1906 following, but shall merely print the words: "Same as order of July 6, 1906, setting time for hearing on petition for assessment, immediately preceding."

That after the words "List of creditors and their respective addresses of the defe-dant, Evans, Johnson Sloane Company, referred to in the annexed affidavit" on page 55, contained in the affidavit of mailing of E. H. Morphy, the plaintiff-in-error shall not print in the record the list of creditors following, but shall merely print the words: "Same as list in proof of mailing of order limiting time to file claims, on page 33 of original, page 154, of certified record, and page — of the printed record on appeal."

That after the venue and the title of the case on page 61 the plaintiff-in-error shall not print in the record the copy of the order of July 6th 1906 then following, being the exhibit attached to the affidavit of publication of W. H. Farnham, but shall merely print the words: "Same as order of July 6th 1906 setting time for hearing on the receiver's petition for assessment, on page 50 of original,
120 page 171 of certified record on appeal and page — of printed record on appeal."

That after the words "Order and decree of assessment as recorded in book 21 of decrees, page 10" on page 64, the plaintiff-in-error shall not print in the record the copy of the order of September 4th 1906 following, but shall merely print the words: "Same as order of Sept. 4th 1906 making assessment, page 62 of original, page 179 of certified record on appeal and page — of printed record on appeal."

That after the words "Exhibit marked 'A' referred to in the affidavit of E. H. Morphy, hereto attached," on page 66, the plaintiff-in-error shall not print in the record the copy of the order of Sept. 4th 1906 following, but shall merely print the words: "Same as order of assessment of Sept. 4th, 1906, page 62 of original, page 179 of certified record on appeal and page — of printed record on appeal."

That after the words "Exhibit A" on page 69, being exhibit A of the affidavit of mailing of E. H. Morphy the plaintiff-in-error shall not print the copy of the order of Sept. 4th 1906 following but shall merely print the words: "Same as order of assessment of Sept. 4th 1906, page 62 of original, page 179 of certified record on appeal, page — of printed record on appeal."

That after the venue and title of the case in the exhibit attached to

the affidavit of publication by W. H. Farnham on page 80 the plaintiff-in-error shall not print in the record the copy of the order of Jan. 8th 1907 following, but shall merely print the words:

121 "Same as order of Jan. 8th 1907 extending time for filing claims, page 79 of original, page 195 of certified record on appeal and page — of printed record on appeal.

That the plaintiff-in-error shall not print in the record on appeal the Schedule of claims on page 104 attached to the judgment allowing claims, but after the title "Schedule of Claims" shall merely print the words: "Same as schedule of claims attached to order for judgment and allowing claims, page 86 of original, page 201 of the certified record on appeal and page — of the printed record on appeal.

That this stipulation shall be printed immediately preceding plaintiff's exhibit 6.

Dated, New York, July 15th, 1912.

JOHN J. CLARK,
Attorney for Defendant in Error.
JAMES, SCHELL & ELKUS,
Attorneys for Plaintiff in Error.

122 EXHIBIT 6.

STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

Office of the Clerk of Said Court.

I, Matt Jensen, Clerk of the said District Court, of the Second Judicial District, in and for the County of Ramsey and State of Minnesota, hereby certify, that upon examination of the records and files in the office of the Clerk of said District Court, I do find there existing, in a certain action commenced and pending in said Court, and there entitled, "Marshall Field and Company, a corporation, Plaintiff, vs. Evans, Johnson, Sloane Company, a corporation, Defendant," a certain original order and judgment of said Court adjudging said defendant corporation insolvent, sequestrating the rights of action to enforce payment of the individual liability of its stockholders and appointing Charles E. Hamilton as receiver of said defendant corporation, and the record thereof as recorded in my said office in Book 21 of Decrees at page 7, also a certain original order of assessment assessing the capital stock of said defendant corporation and requiring said receiver to bring suits to collect the amounts due from said stockholders, and the record thereof as recorded in my office in Book 21 of Decrees at page 10, also a certain original order requiring the creditors of said defendant corporation to present and prove their claims in said action, and also a certain original judgment and decree adjudging and allowing the claims of said plaintiff

and of the other creditors of said defendant corporation, and the record thereof as recorded in my office in Book 19 of Decrees at page 585 and that said original orders, judgments and decrees and the original bond of said receiver approved by said Court, together with the original pleadings, claim statements, orders, notices, proofs of service, and all other original papers, records and files in my office in said action, and each and all thereof, with the endorsements thereon, constituting the entire judgment roll in said action are in the following words and figures, viz:

STATE OF MINNESOTA,
County of Ramsey, ss:

Sander N. Nelson, being first duly sworn, deposes and says
123 that at the City of Minneapolis, County of Hennepin and State of Minnesota, on the 28th day of May, 1906, he personally served the annexed Summons and Complaint upon the Defendant, Evans, Johnson, Sloane Company, by handing to and leaving with W. E. Johnson, Secretary of said Evans, Johnson, Sloane Company, Defendant, a true and correct copy of the annexed Summons and Complaint; that he knows the person so served to be W. E. Johnson, Secretary of said Defendant, Evans, Johnson, Sloane Company.

SANDER N. NELSON.

Subscribed and sworn to before me this 2nd day of June, A. D., 1906.

[Notarial Seal, Ramsey County, Minnesota.]

S. I. LOUGHRAN,
Notary Public, Ramsey County, Minn.

My commission expires January 29th, 1909.

STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD AND COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE CO., a Corporation, Defendant.

Summons.

The State of Minnesota to the above-named Defendant:

You are hereby summoned and required to answer the complaint in the above entitled action, a copy of which complaint is hereto attached and herewith served upon you, and to serve a copy of your answer to the said complaint, on the subscribers, at their offices, No. 718 Manhattan Building, or No. 210 National German American Bank Building, in the city of St. Paul, County of Ramsey and State

aforesaid, within twenty days after the service of this summons upon you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid the plaintiff in this action will apply to the court for the relief demanded in said complaint.

E. H. MORPHY,
718 *Manhattan Building, and*
JAMES E. TRASK,
210 *Nat. Ger. Am. Bank Bldg.,*
Res. 674 *Holly Ave., St. Paul, Minn.,*
Attorneys for Plaintiff.

124 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD AND COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE CO., a Corporation, Defendant.

Complaint.

The above named plaintiff for its complaint in the above entitled action alleges:

First. That during all the times hereinafter stated said plaintiff was, ever since has been, and now is, a corporation duly organized, created and existing under and by virtue of the laws of the State of Illinois.

That during all the times hereinafter stated said defendant was, ever since has been and now is, a corporation duly organized, created and existing under and by virtue of title two (2) of Chapter 34 of the General Statutes of Minnesota for the year 1878, and the laws amendatory thereof and supplementary thereto; and that the general nature of defendant's business, as stated in its articles of incorporation, is to buy, sell, trade, manufacture and deal in goods, wares and merchandise of every kind and nature, which said business said defendant continued to carry on from the date of its organization until it was adjudged a bankrupt, as hereinafter set forth.

That said defendant was so organized on or about the 19th day of April, 1902, under the name of Evans, Munzer, Pickering Company, by which name said defendant was known until about the 10th day of May, 1904, when said defendant duly changed its name to Evans, Johnson, Sloan Co., under which last mentioned name said defendant continued to transact its said business, and by which it has ever since been and now is generally known.

Second. That heretofore and between the 8th day of May and the 15th day of July, 1905, said plaintiff, at the defendant's special instance and request, sold and delivered to said defendant goods, wares and merchandise worth and of the reasonable value of $3,065.50, which sum said defendant promised and agreed to pay therefor; and

that although long since due and duly demanded, said sum has not been paid nor any part thereof except the sum of $306.55 paid by the trustees appointed in the matter of the bankruptcy of said defendant corporation, as hereinafter set forth.

125 Third. That on the 25th day of September, 1905, and for more than eighteen (18) months prior thereto, said defendant was, ever since has been and now is insolvent. That on said 25th day of September, 1905, Lindeke, Warner and Sons, W. E. Mayhew and Simon Lifpitz, as creditors of said defendant, under and pursuant to the act of Congress of 1898 known as the National Bankruptcy act, and the amendments thereto, made and caused to be filed in the United States District Court of the District of Minnesota, their petition, as such creditors, alleging, among other things, that said defendant was insolvent, and had committed an act of bankruptcy on the 19th of August, 1905, by then making a general assignment and transfer of all its property to one Wm. E. Muse for the benefit of its creditors, and praying that said defendant be adjudged a bankrupt.

That said petition with a writ of subpœna duly issued out of said United States District Court was duly served upon said defendant and said court duly acquired jurisdiction over the parties to and the subject matter of said bankruptcy proceedings; and thereupon said further proceedings were duly had in said matter, under said petition, that on the 23rd day of October, 1905, said United States District Court duly made its order and rendered its judgment in said matter adjudging said defendant a bankrupt; and thereafter such other and further proceedings were duly had in said matter that on the 13th day of November, 1905, said United States District Court duly made and filed its order therein appointing Albert W. Lindeke, Norman Fetter and William E. Muse trustees in bankruptcy of said bankrupt defendant; and immediately thereupon said trustees duly qualified, took possession of all the property and assets of said defendant, and entered upon the discharge of their duties of such trustees. That thereafter such further proceedings were duly had in said bankruptcy proceedings that on the 24th day of February, 1906, said bankruptcy Court duly made and entered its order therein discharging said defendant as such bankrupt.

Fourth. That said trustees in bankruptcy have taken possession of and converted into cash all the property and assets which defendant had at the time of the commencement of this action, except its book accounts and bills receivable, that the total amount received by said trustees for said property so converted into cash is $63,600.00, that said book accounts and bills receivable are worth not to exceed $3,000.00 and that said trustees are about to sell said book accounts and bills receivable and close up said bankruptcy proceedings and procure their discharge as such trustees.

126 That long prior to the date of the filing of said petition in bankruptcy, as aforesaid, said defendant was, ever since has been and now is indebted to divers persons, firms and corporations, for goods, wares and merchandise sold and delivered to said defendant in its said business, all of which indebtedness including the afore-

said claim of said plaintiff has been filed in said bankruptcy proceedings; that the total amount of such indebtedness, exclusive of the indebtedness of defendant which arose subsequent to the filing of said petition in bankruptcy and was not scheduled in time for proof and allowance, exceeds the sum of $250,000.00; that the total amount of all the dividends paid and to be paid from said bankruptcy proceedings upon the aforesaid indebtedness therein filed and allowed will not exceed 25 cents on the dollar; and that for the payment of the balance of said indebtedness, after said dividends shall have been applied, and of such additional indebtedness as has arisen subsequently to the filing of said petition in bankruptcy and was not scheduled in said bankruptcy proceedings, said defendant has, at the time of the commencement of this action, no assets, property or fund whatever, except the super-added liability of the stockholders of said defendant upon the shares of its capital stock owned by each stockholder as hereinafter set forth.

Fifth. That said defendant by the terms of its articles of incorporation has a capital stock of $250,000.00 divided into 2,500 shares of the par value of $100.00 a share all of which stock was issued and outstanding prior to the time when the earliest of defendant's said indebtedness arose.

That on or prior to about May, 1904, the persons and parties named in the following list of stockholders, marked schedule A, became ever since have been and now are, owners and holders of the capital stock of said defendant, each of the number of shares thereof and of the par value set opposite their respective names in said schedule A, and that the place of residence of said stockholders is set opposite their respective names in said schedule.

Schedule A.

Name of stockholder.	Residence.	No. of shares owned by each.	Par value.
William A. Alden,	Minneapolis, Minn.	26	$2,600.00
Rudolph Altschul,	Minneapolis, Minn.	1	100.00
John F. Evans,	Minneapolis, Minn.	275	27,500.00
John F. Elwell,	Minneapolis, Miss.	36	3,600.00
William E. Johnson,	Minneapolis, Minn.	175	17,500.00
Rudolph W. Munzer,	Minneapolis, Minn.	274	27,400.00
127 Margareta Mankey,	Minneapolis, Minn.	10	1,000.00
Adam Pickering,	Minneapolis, Minn.	275	27,500.00
Edwin Sloane,	Minneapolis, Minn.	1	100.00
Norman Fetter,	St. Paul, Minn.	100	10,000.00
Ferdinand Loeb,	New York, N. Y.	527	54,000.00
Louis Krower,	515 Broadway, N. Y.	10	1,000.00
S. G. Beals,	395 Broadway, N. Y.	50	5,000.00
Geo. F. Martens,	Nassau Street, N. Y.	100	10,000.00
J. H. Dunham,	New York, N. Y.	50	5,000.00
M. C. Migel and Co.,	43 Green St., N. Y.	5	500.00
Burton Bros. Co.,	384 Broadway, N. Y.	25	2,500.00

E. T. Mason and Co., 28 Green St., N. Y.	25	2,500.00
Franz Merz, 33 Green Street, N. Y.	10	1,000.00
Samstag and Hilder Bros., 557 Broadway, N. Y.	25	2,500.00
Pelegran and Meyer, 113 Spring St., N. Y.	25	2,500.00
B. Levison, Jr., New York, N. Y.	30	3,000.00
G. Vintschger, 193 West St., N. Y.	50	5,000.00
J. M. Brady and Co., New York, N. Y.	50	5,000.00
A. Stein and Co., 218 Market St., Chicago	10	1,000.00
Lillian E. Secor, 872 6th Ave., N. Y.	5	500.00
Strauss Eisendrath and Co., Chicago, Ill.	25	2,500.00
Charles Falkenberg, New York, N. Y.	25	2,500.00
Weiner Bros., 520 Broadway, N. Y.	5	500.00
Albert Pulaski, New York, N. Y.	10	1,000.00
Loeb and Schoenfeld, 457 Broadway, N. Y.	50	5,000.00
John F. Dezell, 58 White St., N. Y.	10	1,000.00
Arthur Selig, 71 Grand St., N. Y.	50	5,000.00
G. F. Simon, New York, N. Y.	25	2,500.00
Ballin and Bernheimer, 515 Broadway, N. Y.	100	10,000.00
William Meyers, New York, N. Y.	10	1,000.00
E. W. Strouss, 240 Jackson St., Chicago, Ill.	10	1,000.00
Louis Eisendrath, 240 Jackson St., Chicago, Ill.	15	1,500.00
Chas. Simons Sons, New York, N. Y.	50	5,000.00

Sixth. That the stockholders named in the following list of stockholders, marked schedule B, after acquiring their said stock, as aforesaid, for the purpose of avoiding their liability as owners thereof, made pretended transfers of their said stock to the transferrees, respectively, set forth in said schedule B, the number of the said shares so transferred by each stockholder and the
128 names of the respective transferrees to whom said stock was so transferred being set down in said schedule B opposite the names of said stockholders, respectively, so transferring their stock.

Schedule B.

Name of stockholder.	No. of shares.	Name of transferree.
Rudolph W. Munzer	274	Edwin Sloane.
Adam Pickering	137½	John F. Evans.
Adam Pickering	137½	William E. Johnson.
John F. Elwell	36	William E. Johnson.
Arthur L. Selig	50	Max Mayer.
G. F. Simon	25	Bernard Schwab.
Balling and Bernheimer	75	J. Edward Gleason.
William Meyers	10	F. F. Kreuder.
E. W. Strouss	10	Joseph Strouss.
Louis Eisendrath	15	Joseph Strouss.
Chas. Simons Sons	50	Meyer Heigberg.
Louis Krower	10	Samuel Berger.
S. G. Beals	50	Leonard S. Beals.
Geo. F. Mattens	100	William E. Johnson.

That each and all of the foregoing pretended transfers were made, as aforesaid, after said defendant corporation had become insolvent as aforesaid, after its capital stock had become greatly impaired and after a large part of the aforesaid indebtedness had arisen, and that the same and each thereof are and were without consideration, made for the aforesaid purpose to insolvent transferrees with the understanding and agreement between the parties to said respective transfers that said respective transferrees should not hereby acquire any beneficial interest in said stock and that said respective transferrers should be and remain the owners of the entire beneficial interest in the said stock so transferred as aforesaid.

Seventh. That the aforesaid stockholders, named in the following list of stockholders, marked schedule C, under column headed "Name of Stockholder" for the purpose of avoiding their liability on their said stock, took and hold the said stock owned by them, respectively, as aforesaid, and as set opposite their respective names in said schedule C, not in their own names, but in the names of their respective agents for that purpose, and that the respective names of the persons so acting as agents of said stockholders, respectively, in holding said stock, are set opposite the names of said respective stockholders in said schedule C under column headed "Name of Agent." That said agents so took and hold in their respective names in said stock set op-
129 posite their respective names in said schedule C, and owned by said stockholders, as aforesaid, with the understanding and agreement between said stockholders and the persons named in said schedule C as their respective agents, that the latter shall not have any beneficial interest whatever in said stock, or any part thereof, but that the entire beneficial interest in said stock shall be owned by the persons, corporations and firms, so owning and holding said stock, as aforesaid, and whose names are set down in said schedule C under column headed "Names of Stockholder."

Schedule C.

Name of stockholder.	Name of agent.	No. of shares owned.	Par value.
J. H. Dunham and Co....	Geo. W. Hugo.....	50	$5,000.00
M. C. Migel and Co.....	A. W. Fitzpatrick....	5	500.00
Burton Bros. Co.....	F. L. St. John.....	25	2,500.00
E. T. Mason and Co.....	W. G. Ryan.....	25	2,500.00
Samstag and Hilder Bros..	Benjamin Brower.....	25	2,500.00
Wm. A. Alden.....	Mary E. Day.....	25	2,500.00
Pelgram and Meyer.....	Herman Schiffer.....	25	2,500.00
Ferdinand Loeb.....	William A. Alden....	264	26,400.00
Ferdinand Loeb.....	John F. Elwell.....	263	26,300.00

Eighth. That the said stockholders named in the following list of stockholders, marked schedule D, with the intent of avoiding

their liability as owners of the said stock set opposite their respective names in said schedule D, (and owned by them respectively as set forth in the foregoing list of stockholders marked schedule A,) after they had subscribed for and taken and paid for and become the owners each of his said stock, and after said defendant was in failing circumstances and its capital stock had become greatly impaired, without notice to or the knowlege or consent of said plaintiff or of any of the creditors of said defendant, and without authority from the articles of incorporation or by-laws of said defendant, or from its board of directors, entered into a pretended agreement with certain officers of said defendant whereby said stockholders named in said schedule D were released from their liability upon said stock, respectively, and their stock, and the stock of each of them, was surrendered to said defendant, and whereby, as a part of said pretended agreement and a part of the said transaction of the surrender of said stock, said stockholders named in said schedule D were paid out of the assets of said defendant, each an amount equal to the par value of their said stock subscribed for, taken and owned by
130 them as aforesaid, said defendant thereby withdrawing its capital and assets and distributing it among the said stockholders in schedule D without making any adequate provision for the payment of its said indebtedness to plaintiff or the other creditors of said defendant.

Schedule D.

Name of stockholder	Number of shares owned and surrendered	Par value.
Pelgran and Meyer	25	$2,500.00
B. Levison	30	3,000.00
Norman Fetter	100	10,000.00

Ninth. That the stockholders owning and holding, as aforesaid, $112,300.00 of said capital stock of said defendant reside within the state of Minnesota, and are within the jurisdiction of this Court; but that the owners of a large portion of said $112,300.00 of said capital stock are wholly insolvent, the owners of nearly all of the balance of said $112,300.00 of said stock are of doubtful solvency, and the probable amount which can be collected from said resident stockholders, owning said $112,300.00 of said capital stock does not exceed the sum of $14,000.00.

That the stockholders owning and holding the balance, or, $137,700, of said capital stock, as set forth in said schedule A, reside out of the State of Minnesota, as shown by said schedule A, and that they are substantially all solvent and able to pay the liability on the stock owned by them, respectively, as shown by schedule A.

That the said stockholders owning said $137,700 of said liability are not subject to the jurisdiction of this court, and can-

not by summons or process be brought within the jurisdiction of this court, except the jurisdiction which this Court upon proper order and notice acquires over all said stockholders to adjudge and order a ratable assessment upon all stockholders and all the stock of said defendant and against all parties liable thereon, and to direct enforcement of the payment of such assessment by action against said stockholders whether resident or non-resident and in whatever state or jurisdiction they may be found.

That the probable amount which can be collected from said non-resident stockholders owning said $137,700 of said capital stock through or by means of a judgment or order of assessment by the court herein is the sum of $126,000.00. That the said indebtedness of said defendant is for goods, wares and merchandise purchased by said defendant from its creditors, for a portion of which indebtedness said defendant has given its promissory
131 notes; and that the probable amount of said indebtedness and all the indebtedness of said defendant, after deducting all the dividends paid or to be paid upon said indebtedness from said bankruptcy proceedings, is the sum of $200,000.00, or more.

That nearly all of the aforesaid stockholders who are solvent and have means and property from which their liability can be collected have transferred or otherwise disposed of their stock, as hereinbefore set forth for the purpose of denying their liability and avoiding payment thereof; and that a large number of actions involving considerable expense will be required to enforce payment of the liability of said solvent stockholders. That the costs and expenses of this action and of the receivership herein and of collecting the liability of the stockholders of said defendant through this action, the appointment of a receiver, an order assessing the stock and stockholders of said defendant and the necessary actions by said receiver to enforce payment of said assessment, will probably exceed the sum of $25,000.00. That said defendant had at the time of the commencement of this action no property or assets whatever, and that it is necessary to resort to the enforcement of payment of the said super-added or constitutional liability of the stockholders of said defendant.

Tenth. That this action is brought by said plaintiff on its own behalf and on behalf of all the creditors of said defendant, who shall present their claims and become parties to this action, for the appointment of a receiver of the property and effects which said defendant shall or may acquire subsequent to the commencement of this action and of the causes of action to recover upon and enforce for the benefit of creditors the super-added liability of all the stockholders of said defendant, with authority to collect the said super-added liability by means of a ratable assessment adjudged and ordered by the court herein upon all the capital stock of said defendant and upon all parties liable as stockholders, under and pursuant to Chapter 272 of the General Laws of Minnesota for 1899, and to determine and adjudge the claim of plaintiff herein, and the claims of all the other creditors of said defendant, and the amount of each claim, and to distribute the fund so col-

lected, less the costs and expenses of this action and of the receivership herein, among all the creditors whose claims shall be duly presented and tried, adjudged and allowed by the court in this action.

Eleventh. That it is the law of the said states in which said non-resident stockholders reside, as aforesaid, and the law of the United States, as decided by the Supreme Court of the
132 United States in the case of Hale vs. Allinson, 188 U. S., page 56, that the receiver of a Minnesota corporation in an action brought under Chapter 76 of General Statutes of Minnesota for 1878, prior to its amendment by Chapter 272 General Laws of 1899, to enforce the super-added liability of the stockholders of such corporation, has no power or right to bring or maintain any action against a stockholder of such corporation outside the state of Minnesota to enforce such liability.

That ninety per cent (90%) of the solvent liability, or liability due from stockholders of said defendant who have the means with which to pay, is non-resident stockholders who are not subject to, and cannot be brought within the jurisdiction of this court, except its jurisdiction to adjudge and order a ratable assessment, as aforesaid; and that the only way to enforce said ninety per cent of said liability due from stockholders who have the means with which to pay is by an action brought, as this action is brought, for the appointment of a receiver, as hereafter asked, to enforce payment of the stockholders' liability by a judgment and order of the court herein levying a ratable assessment upon all stock and against all the stockholders of said defendant, as aforesaid.

Wherefore plaintiff prays for the judgment of this court granting the following relief:

1. That the court make an order herein, notice of which shall be given as therein provided, requiring all creditors of said defendant to exhibit their claims and become parties to this action within a reasonable time to be provided by said order, and in default thereof to be precluded from all benefit of the judgment which shall be rendered herein and from any distribution which shall be made under the judgment herein.

2. That the court adjudge said defendant wholly insolvent and appoint, with the usual powers and directions, a receiver of all the property and effects which said defendant has acquired and become the owner of since the commencement of this action and of the right and causes of action to recover upon and enforce for the benefit of the creditors of said defendant the super-added liability of its stockholders by means of a ratable assessment levied by the court herein upon all the stock of said defendant and upon all parties liable thereon as stockholders.

3. That upon such notice, by publication or otherwise, as the court may direct, the court make an order herein requiring all persons liable as stockholders, and all stockholders, to show cause, if any there be, at a time and place of hearing to be designated
133 in said order, why said court should not by its judgment and order herein levy the ratable assessment herein asked; and that said court upon said hearing in this action ascertain the

probable indebtedness of said defendant and the probable expenses of this action and of the receivership herein, and the probable amount and value of the available assets, if any, acquired by said defendant since the commencement of this action, and what parties may be liable as stockholders, the nature and amount of their liability, and their probable solvency or insolvency, and make an order herein levying a ratable assessment upon the parties liable as stockholders, or on account of said stock, for the par value of said stock or such amount or percentage thereof as the court may deem proper, said order of assessment to order and direct said receiver to collect the amounts so assessed, and, on failure of any one liable to said assessment to pay the same within the time prescribed, to prosecute an action against him whether resident or non-resident and wherever found.

4. That the court hear, try and determine the claim of said plaintiff, and the respective claims of all creditors who shall duly present their claims herein, and by decision allow the same and each thereof for the amount found to be justly due thereon, and give judgment herein against said defendant therefor; and that the court render judgment herein in favor of said plaintiff, upon its said claim, and against said defendant, for the sum of $3,034.85 and interest thereon from the 8th day of May, 1905.

5. That the judgment of the court herein provide that the moneys collected in this receivership be distributed by the receiver under the further orders of the court as follows:

First. That said receiver first pay the attorneys for the plaintiff herein the costs and disbursements and expenses of this action, together with such reasonable compensation for their services as such attorneys as may be allowed by order of the court.

Second. That said receiver pay the costs and disbursements and expenses of this receivership, together with such reasonable compensation for the services of said receiver, and his attorney or attorneys, as may be allowed by the further order of the court upon application.

Third. That out of the balance, if any, remaining in his hands after paying the costs and disbursements, expenses, fees and compensation above provided for, said receiver pay the claim of said plaintiff and all the allowed claims of creditors herein in full, if such balance be sufficient therefor; and if it be not sufficient to pay such claims in full, then that said receiver distribute such
1:34 balance among said creditors who shall have proved their claims, pro-rata, so that each creditor shall receive the proportion thereof to which he is justly entitled.

Fourth. Should the balance remaining, after payment of the costs, disbursements, expenses, compensation and fees hereinbefore mentioned and provided for, be more than enough to pay the claims of said creditors and said plaintiff in full, with interest, then that said receiver distribute such over-plus, if any, among the stockholders of said defendant who pay said assessment, so that each shall receive the pro-rata proportion or share of such over-plus to which he is justly entitled.

6. That the court grant herein such other, further or different relief as to the court may be deemed just and proper.

JAMES E. TRASK AND
E. H. MORPHY,
Attorneys for Plaintiff.

STATE OF MINNESOTA,
County of Ramsey, ss:

James E. Trask came before me and being first duly sworn, deposes and says that he is one of the attorneys for the plaintiff in the above entitled action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true according to the best of his knowledge, information and belief, and that the reason why he makes this verification is that both said plaintiff and each and all of its officers are absent from said Ramsey County, wherein resides said plaintiff's said attorney.

JAMES E. TRASK.

Subscribed and sworn to before me on this 28th day of May, 1906.

[Notarial Seal, Ramsey County, Minnesota.]

S. I. LOUGHRAN,
Notary Public, Ramsey County, Minn.

My commission expires January 29th, 1909.

Endorsed: No. 93657. State of Minnesota, County of Ramsey, District Court. Marshall Field & Co. vs. Evans, Johnson, Sloane Co. Summons and complaint. Filed June 25, 1906. Edward G. Rogers, Clerk, by G. A. Johnson, Deputy. James E. Trask and E. H. Morphy, Attorneys for Plaintiff, St. Paul, Minnesota.

135 STATE OF MINNESOTA,
County of Ramsey, ss:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation,
vs.
EVANS, JOHNSON, SLOAN COMPANY, a Corporation.

SIR:—You will please to take notice that we are retained and appear as attorneys for the defendant in the above entitled action, and ask a copy of the complaint therein.

Yours respectfully,

KERR & FOWLER,
Attorneys for Defendant,
311 *Nic. Ave., Minneapolis.*

Dated June 13th, 1906.
To J. E. Trask & E. H. Morphy, Attorneys for Plaintiff.

Endorsed: No. 93657. District Court, Second Judicial District, County of Ramsey. Marshall Field and Co. vs. Evans, Johnson, Sloan Co. Notice of Retainer and Appearance. Filed June 25, 1906. Edward G. Rogers, Clerk, by E. A. Johnson, Deputy.

STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

STATE OF MINNESOTA,
County of Ramsey, ss:

E. H. Morphy, being first duly sworn upon oath, deposes and says that he is one of the attorneys of the above named plaintiff in the above entitled action; that the summons and complaint of said action were duly and properly served upon the above named defendant herein on the 28th day of May, 1906, as appears by the affidavit of Sander N. Nelson, attached to said summons and complaint; that more than twenty (20) days have elapsed since the service of said summons and complaint upon the above named defendant and that no answer or demurrer, or copy of either, has been received by the plaintiff's attorneys, or either of them, in this cause, nor has
136 the said defendant in any manner appeared therein, by attorney or otherwise; and plaintiff prays judgment according to law.

E. H. MORPHY.

Subscribed and sworn to before me this 20th day of June, A. D 1906.

[Notarial Seal, Ramsey County, Minnesota.]

SANDER N. NELSON,
Notary Public, Ramsey County, Minnesota.

My commission expires January 10th, 1902.

STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

Answer.

Now comes Edwin Sloane and for his answer to the petition in the above entitled proceeding alleges:

That heretofore and on the 18th day of October, 1905, in the United States District Court, District of Minnesota, Fourth Division, he filed his petition for voluntary bankruptcy, to which he thereafter on the 13th of November, 1905, attached an amended schedule, at which time the trustees in bankruptcy of the defendant company in this proceeding were duly notified of this answering defendant's purpose in his said voluntary bankruptcy to be discharged from his stock liability as a member of the defendant company herein, and that thereafter and on the 23rd day of December, 1905, he was duly discharged by the said Court from all debts and claims theretofore held against him, including the claim of stock liability set forth in said petition, a certified copy of said discharge being attached hereto, marked Exhibit "A" and made a part hereof.

Further answering, he admits the incorporation of defendant company and admits his insolvency, both now and at the time of his petition in bankruptcy referred to and when discharged as aforesaid.

Alleges that as to the allegation of conditional transfer to him of a block of said stock, that the same is not true; that he was at the date of his said petition in bankruptcy the bona fide owner of the full number of shares in said defendant corporation accredited to him on the stock book of said corporation and that he
137 has lost the whole sum which he paid therefor, being about forty per cent (40%) of the par value thereof and being the entire accumulations of his business career up to that time.

Wherefore, he asks the order of the Court relieving him from any assessment for alleged stock liability as a member of the defendant corporation, and for such other and further relief as the Court may deem equitable, and that he be hence dismissed.

J. R. CORRIGAN,
Defendant's Attorney.
1011 *New York Life Bldg., Minneapolis, Minn.*

UNITED STATES OF AMERICA,
District of Minnesota, Fourth Division, ss:

EXHIBIT "A."

I, Charles L. Spencer, Clerk of the United States District Court for the District of Minnesota, do hereby certify that I have carefully compared the copy attached to this certificate with its original, which is in my custody as such Clerk, and that the said copy is a full, true and correct transcript from such original and of the whole thereof.

In testimony whereof, I have hereunto set my official signature as the Clerk aforesaid and affixed the seal of said Court, at Minneapolis, in the Fourth Division of said District, this 27th day of July, A. D. 1906.

CHARLES L. SPENCER, *Clerk,*
By MARGARET C. NOONAN,
Deputy Clerk.

United States District Court, District of Minnesota, Fourth Division.

Whereas, Edwin Sloane of Minneapolis, in the County of Hennepin, in said District, has been duly adjudged a bankrupt, under the Acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf,

It is therefore ordered by this Court, on this 23rd day of December, A. D. 1905, that said Edwin Sloane be discharged from all debts and claims which are made provable by said Acts
138 against his estate, and which existed on the 18th day of October, A. D. 1905, on which day the petition for adjudication was filed by him, excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

Witness, the Honorable William Cochran, Judge of said District Court, and the seal thereof this 23rd day of December, A. D. 1905.

CHARLES L. SPENCER, *Clerk*.
By MARGARET C. NOONAN,
Deputy.

[SEAL.]

Etd. T. M. 4 Div., Vol. 9, p. 389.

Endorsed: No. 1375. United States District Court, District of Minnesota, Fourth Division. Discharge of bankrupt. Edwin Sloane. Filed at 3:00 o'clock P. M., December 23, 1905. Charles L. Spencer, Clerk, by Maragret C. Noonan, Deputy.

STATE OF MINNESOTA,
County of Hennepin:

J. R. Corrigan, being first duly sworn, upon oath says that he is the attorney for Edwin Sloane, one of the defendant corporation in the foregoing within entitled action; that he has heard read the foregoing answer; that the same is true to the best of his knowledge, information and belief, and that the reason why this verification is not made by the said Edwin Sloane herein is that said Edwin Sloane is absent from the county wherein resides this affiant, his attorney.

J. R. CORRIGAN.

Subscribed and sworn to before me this 10th day of August, A. D. 1906.

[NOTARIAL SEAL.]

JOHN A. SWEE,
Notary Public, Hennepin County, Minn.

My commission expires Mar. 8th, 1913.

Endorsed: No. 93657. State of Minnesota, Ramsey County, District Court. Marshall Field & Co., Plaintiff, vs. Evans, Johnson, Sloane Co., Defendant. Filed Aug. 11, 1908. Edward G. Rogers, Clerk, by N. J. Greene, Deputy.

139 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

Notice.

To W. A. Kerr and Kerr and Fowler, Attorneys for Defendant:

Notice is hereby given that at a special term of said Court to be held at the Court House in the city of St. Paul, in said Ramsey county, on the 23rd day of June, 1906, at the opening of said court on that day, or as soon thereafter as counsel can be heard, the undersigned, as attorneys for the plaintiff in the above entitled action, will move before said Court for an order of said Court appointing a receiver, with the usual powers and directions, of all the property, things in action and effects, if any, which it has acquired since the commencement of this action and of the cause of action to enforce payment of the individual liability of the stockholders of said defendant for its indebtedness to its creditors, and of any other liability of the stockholders or officers of said company to its creditors, said receiver to have all the powers of a receiver under section 3173 of the Revised Laws of Minnesota and of a receiver in equity, and to be authorized to take the necessary steps to collect the statutory liability of the stockholders of said defendant to its creditors by means of a ratable assessment upon all the parties liable as stockholders, or on account of any stock of said defendant. Said motion will be based upon the attached affidavit and upon the summons and complaint in said action.

Dated this 12th day of June, 1906.

JAMES E. TRASK AND
E. H. MORPHY,
Attorneys for Plaintiff.

STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD AND COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOAN COMPANY, a Corporation, Defendant.

STATE OF MINNESOTA,
County of Ramsey, ss:

140 James E. Trask, being first duly sworn, deposes and says he is one of the attorneys for the plaintiff in the above entitled action.

That said defendant is a mercantile corporation organized under and by virtue of the laws of the State of Minnesota, with an issued and outstanding capital stock of $250,000.00, divided into 2,500 shares of the par value of $100.00 each; and that the general nature of the business of said defendant is to buy, sell and deal in goods, wares and merchandise of every name and nature.

That upon the petition of certain creditors of said defendant duly filed in the United States District Court on the 25th day of September, 1905, said defendant was on the 23rd day of October, 1905, duly adjudged a bankrupt under the National Bankruptcy Act; and thereafter such other and further proceedings were had in said matter that on the 13th day of November, 1906, said United States District Court duly made and filed its order therein appointing trustees in bankruptcy of said bankrupt defendant; and immediately thereupon said trustees duly qualified, took possession of all the property and assets of said defendant, and entered upon their duties as such trustees.

That said defendant is wholly insolvent, and that at the date of the commencement of this action said defendant had no property or assets whatever except the liability of its stockholders to its creditors.

That said trustees in bankruptcy have converted into cash all the property and assets which defendant had at the time of the filing of said petition in bankruptcy, except its book accounts and bills receivable; that the total amount received by said trustees for said property so converted into cash is $63,600.00; that said book accounts and bills receivable are worth not to exceed $3,000.00, and that said trustees are about to sell said book accounts and bills receivable and close up said bankruptcy proceedings, and procure their discharge as such trustees.

That prior to the filing of said petition in bankruptcy said defendant became indebted to sundry persons, firms and corporations, and is now indebted to them, for goods, wares and merchandise sold and delivered to defendant in its said business, all of which indebtedness, including defendant's indebtedness to plaintiff herein for the sum of $3,065.50, has been filed in said bankruptcy proceedings; that the total amount of such indebtedness, exclusive of the indebtedness of defendant which arose subsequent to the filing of said petition in bankruptcy and was not scheduled in time for proof
141 and allowance, exceeds the sum of $250,000.00; that the total amount of the dividends paid and to be paid from said bankruptcy proceedings upon said indebtedness will not exceed 25 cents on the dollar; and that for the payment of the balance of said indebtedness, after said dividends have been applied, and of such additional indebtedness as has arisen subsequently to the filing of said petition in bankruptcy and was not scheduled in time in said bankruptcy proceedings, said defendant has no assets whatever except the constitutional liability of the stockholders upon their shares of its said capital stock, and such other liability of said stockholders as may exist upon their said stock.

That the probable amount of the indebtedness of said defendant,

exclusive of its indebtedness to this plaintiff, and after deducting all dividends paid or to be paid on said indebtedness from said bankruptcy proceedings, is the sum of $200,00.00, or more; that there is no property, money or effects available for the payment of said indebtedness except the liability of stockholders upon their stock, and that it is necessary to resort to the enforcement of payment of the said superadded or constitutional liability of the stockholders of said defendant.

That this action is brought by said plaintiff, on its own behalf and on behalf of all the creditors of said defendant who shall present their claims and become parties to this action, for the appointment of a receiver of all the property, things in action and effects of said defendant, if any, which did not pass into the hands of said trustees in bankruptcy, or which, having passed into their hands, shall not have been by them converted into money or otherwise disposed of at the close of said bankruptcy proceedings, and of the causes of action to enforce the statutory or superadded liability of stockholders of said defendant, and of any other liability of the stockholders of said defendant, with authority to collect and enforce payment of the said superadded liability by means of a ratable assessment upon all the parties liable as stockholders, or upon account of any stock of said defendant, for such amount, proportion or percentage of such liability as the Court may determine by its order herein assessing said stock and the persons liable thereon, and to determine and adjudge the claim of plaintiff herein, and the claims of all the other creditors of said defendant, and the amount of each claim, and to distribute the fund so collected, less the costs and disbursements and expenses of this action and of the receivership herein, among all the creditors whose claims shall be duly presented
142 and tried, adjudged and allowed by the judgment of the court herein.

That more than 90 per cent of the solvent liability, or liability due from stockholders of said defendant who have the means with which to pay, is of non-resident stockholders who are not subject to, and cannot be brought within, the jurisdiction of this Court, except its jurisdiction to adjudge and order a ratable assessment, as aforesaid; and that the only way to enforce said ninety per cent of said liability due from stockholders who have the means with which to pay is by an action brought, as this action is brought, for the appointment of a receiver, as herein and in the complaint in this action asked, to enforce payment of the stockholders' liability by a judgment and order of assessment upon all stock and against all stockholders of said defendant.

That it is necessary promptly to take the necessary proceedings to enforce the said super-added or statutory liability of the stockholders of said defendant in order to prevent said stockholders from taking advantage of any delay in such proceedings to avoid and evade their said liability, and thus diminish and waste the fund to be derived from the prompt enforcement of said liability.

That this action cannot be tried, or judgment therein rendered, until after the time limited by order of the court within which cred-

itors may present their claims has expired; that plaintiff is about to apply to the Court for such an order which must give to creditors at least six months in which to file and present their respective claims, and that the interests of the plaintiff and other creditors of said defendant require that a receiver of said defendant, as prayed for in the complaint in this action, be immediately appointed by order of the Court herein, among other things, to take the necessary proceedings to enforce the said liability of the stockholders of said defendant in order that said liability may be secured, collected and enforced without loss of the moneys arising therefrom by reason of delay in such enforcement, as aforesaid.

That deponent makes this affidavit on behalf of the plaintiff and the creditors of said defendant who shall present their claims for the purpose of asking the Court to make an order herein immediately appointing a receiver herein as prayed for in the complaint in this action.

JAMES E. TRASK.

143 Subscribed and sworn to before me this 18th day of June, 1906.

[Notarial Seal, Ramsey County, Minnesota.]

CHARLES BECHHOLFER
Notary Public, Ramsey County, Minn.

My commission expires December 13, 1908.

Endorsed: No. 93657. State of Minnesota, County of Ramsey. District Court. Marshall Field and Co. vs. Evans, Johnson, Sloan Co., a Corporation. Affidavit and Notice of Motion. Due service of the within notice of motion and affidavit on this 13th day of June is duly admitted. W. A. Kerr and Kerr & Fowler, Attorneys for Defendant. Filed June 25, 1906. Edward G. Rogers, Clerk, by G. A. Johnson, Deputy. James E. Trask and E. H. Morphy, Attorneys for Plf.

STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD AND COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOAN CO., a Corporation, Defendant.

Order.

The above entitled action duly coming on to be heard at a special term of said court on the 23rd day of June, 1906, upon the application of said plaintiff for an order appointing a receiver of said defendant herein, and it appearing that the summons and complaint herein were duly and personally served upon said defendant on the 28th day of May, 1906, and that no answer or demurrer to said complaint, or copy of either, has ever been served upon said plaintiff, or its attorneys or either of them, and upon reading and filing said

complaint and the affidavit upon which said application was based, and upon the testimony taken and received at said hearing, whereby it satisfactorily appears that said defendant is a corporation duly organized under and by virtue of the laws of the State of Minnesota with an issued and outstanding capital stock of $250,000.00; that the general nature of defendant's business is to buy, sell and deal in goods, wares and merchandise; that said defendant was at the time of the commencement of this action, and now is, insolvent; that its indebtedness exceeds $250,000.00; that upon the petition of certain creditors of said defendant filed in the United States District Court for the District of Minnesota on the 25th day of September, 1905, said defendant was on the 23rd day of October, 1905, duly adjudged a bankrupt under the national bankruptcy act; that there-
144 after such other and further proceedings were duly had in said matter that on the 13th day of November, 1905, said United States District Court duly made its order appointing trustees in bankruptcy of said defendant, who immediately thereafter duly qualified and took possession of all the property and assets of said defendant; that the claim of the plaintiff herein was duly filed and allowed in said bankruptcy proceedings, and that on the 24th day of February, 1906, said Bankruptcy Court duly made its order in said bankruptcy proceedings discharging said defendant corporation; that said bankruptcy proceedings are about to be closed, and that the total amount of all the dividends paid and to be paid upon said indebtedness will not exceed 20 cents on the dollar; that said defendant had no property or assets whatever at the date of the commencement of this action, and that it is necessary to resort to the superadded or constitutional liability of the stockholders of said defendant; and after hearing counsel and due deliberation having been had, now, on motion of James E. Trask and E. J. Morphy, attorneys for plaintiff, W. A. Kerr and Kerr and Fowler appearing for said defendant and consenting thereto, it is hereby

Ordered, decreed and adjudged: 1. That all property acquired by said defendant since the commencement of this action, and all property and estate of said insolvent company not taken and administered in said bankruptcy proceedings, and all the stock of said defendant, and the causes of action to enforce payment of said superadded or constitutional liability of stockholders, and any other liability of the officers or stockholders, of said defendant to its creditors, be sequestered, and Chas. E. Hamilton be and is hereby appointed receiver of said defendant corporation, which is hereby adjudged insolvent, and of all of said property, capital stock and causes of action, with the usual powers and directions, and with all the powers and authority of a receiver under Chapter 58 of the Revised Laws of Minnesota, and all the powers of a receiver in equity, and with full power and authority to collect and bring and maintain actions at law or in equity to enforce payment of said liability, and to prosecute appeals or sue out writs of error in such actions.

2. That said receiver be, and he is hereby, authorized to take the proper and necessary steps to collect and enforce payment of the said superadded or constitutional liability of the stockholders of said

defendant for its debts by means of a ratable assessment to be ordered by the Court herein upon all the parties liable as stockholders
145 for such percentage of such liability on account of each share of such stock as the Court, upon application of said receiver and upon due notice stating the time and place of hearing, may hereafter determine by its order herein, which order of assessment shall direct payment of the amount so assessed against each share of such stock to said receiver, within the time specified in said order, and collect and enforce payment of any other liability of stockholders or officers of said defendant for its indebtedness to said creditors, and to convert into cash such property and effects, if any, of said defendant as may come into his hands as receiver herein.

3. Upon the Court's making and filing such order of assessment, said receiver after the expiration of the time specified in such order for the payment of said assessments, shall commence action against every party so assessed and failing to pay, wherever he or any property subject to process in such action is found, whether in the State of Minnesota or elsewhere.

4. That said receiver keep all moneys collected herein on deposit to his account as such receiver in the National Bank in the city of St. Paul, in said Ramsey County, and so hold the same for distribution in accordance with the judgment which shall be entered herein and subject to the further orders of the Court.

5. That before entering upon the duties of his trust said receiver execute to the State of Minnesota, for the benefit of all parties interested, and file with the Clerk of this Court herein a bond with sufficient sureties to be approved by a judge of this Court, in the sum of $1,000.00.

Dated at St. Paul, Minn., this 25 day of June, 1906.

OSCAR HALLAM,
District Judge.

Endorsed: No. 93657. State of Minnesota, County of Ramsey. District Court. Marshall Field and Co. vs. Evans, Johnson, Sloane Co. Order of Sequestration and Appointing Receiver. Filed June 25, 1906. Edward G. Rogers, Clerk, by G. A. Johnson, Deputy. Recorded in Book 21 of Decrees, at page 7.

146 *Order as Recorded in Book* 21 *of Decrees, Page* 7.

(Same as order appointing Receiver of June 25, 1906, immediately preceding).

147 Know all men by these presents, that we Charles E. Hamilton of the City of St. Paul, County of Ramsey, and State of Minnesota, as principal, and the Bankers Surety Company, a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, as surety, are held and firmly bound unto the State of Minnesota in the sum of one thousand ($1,000.00) dollars in lawful money of the United States, to be paid to the said State of Minnesota, for which payment well and truly to be made, we bind

ourselves and our respective heirs, executors and administrators, and successors and assigns jointly and severally by these presents.

Signed and sealed this 25th day of June, A. D., 1906.

The condition of this obligation is such that whereas Marshall, Field & Company, a corporation, duly commenced an action in the District Court of Ramsey County, Second Judicial District, State of Minnesota, against Evans, Johnson, Sloane Company, a corporation, and thereafter such proceedings were had in said action that on the 25th day of June, 1906, the above named bounden Charles E.
148 Hamilton was appointed Receiver of all the property, things in action, and effects of the above defendant, and of the causes of action to enforce payment of the super-added or individual liability of the stockholders of said defendant to its creditors, and of any other liability of the officers or stockholders of said defendant to its creditors with power and authority of the said bounden, as such Receiver, to take the necessary steps to collect and enforce the payment of the said liability of the stockholders of the said defendant for its debts by means of a ratable assessment upon all the parties liable as stockholders, or upon account of any stock of said defendant, for such amount, proportion or percentage of such liability on account of each share of such stock as the Court upon the application of the said bounden, as such Receiver, may hereafter determine by its order, with power to collect and enforce payment of any other liability of the stockholders or officers of said defendant for its indebtedness to said creditors, and to convert into cash such property and effects, if any, of said defendant as may come into his hands as said Receiver, and with power, upon the said Court making and filing an order for assessment, to commence action against every party so assessed and failing to pay, and with authority of the said bounden, as such Receiver, to keep all moneys so collected on deposit to his account as such Receiver in a national bank in the City of St. Paul, and to hold the same for distribution in accordance with the judgment which may be entered herein — said action and subject to the further order of said Court, and the said bounden has accepted said trust with all the duties and obligations pertaining thereunto.

Now, therefore, if the above bounden Charles E. Hamilton, as such Receiver, as aforesaid, shall obey such orders as said Court may make in relation to said trust and shall faithfully and truly account for all moneys, assets, and effects, which shall come into his hands and possession, and shall in all respects faithfully perform all his official duties as such Receiver, then this obligation to be void, otherwise to remain in full force and virtue.

[SEAL.] CHARLES E. HAMILTON.

Signed, sealed and delivered in presence of
E. H. MORPHY, as to Execution by Chas. E. Hamilton.
CORA B. LLEWELLYN, as to Surety
EDITH FELLER, " " "
IDA F. DILLEY.

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CHARLES E. HAMILTON.
THE BANKERS SURETY CO.
JOHN M. BRADFORD, *Attorney.*
[SEAL.] F. J. CALLAHAN, *Agent.*

STATE OF MINNESOTA,
County of Ramsey, ss:

On this 25th day of June, A. D., 1906, before me a Notary Public in and for said County, personally appeared Charles E. Hamilton, to me personally known to be the same person described in and who executed the foregoing instrument, and acknowledged that he executed the same freely and voluntarily as his free act and deed.

[NOTARIAL SEAL.] CORA B. LLEWELLYN,
Notary Public, Ramsey County, Minnesota.

My commission expires October 4th, 1911.

STATE OF MINNESOTA,
County of Ramsey, ss:

On this 27th day of June, A. D., 1906, before me appeared F. J. Callahan and Jno. M. Bradford to me personally known, who being by me duly sworn, did say, that they are respectively the Agent and the Attorney of the Bankers Surety Company, of Cleveland, Ohio, a Corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors, and said F. J. Callahan and Jno. M. Bradford acknowledged said instrument to be the free act and deed of said Corporation.

S. I. LOUGHRAN,
Notary Public, Ramsey County, Minnesota.

My commission expires January 29, 1909.

Endorsed: No. 93657. State of Minnesota, County of Ramsey, District Court. Marshall Field and Co. vs. Evans, Johnson, Sloane Co. Receiver's Bond. Filed June 27, 1906. Edward G. Rogers, Clerk, By G. A. Johnson, Deputy. James E. Trask and E. H. Morphy, Attorneys for Plaintiff, St. Paul, Minnesota.

150 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

Charles E. Hamilton, as receiver of said defendant herein, respectfully represents to the Court that on the 25th day of June, 1906, he executed his bond as receiver herein in the sum of One Thousand Dollars ($1,000.00); that the Bankers Surety Company executed said bond as surety; that said bond so executed was on the 25th day of June, 1906, filed herein; but that through inadvertence no order approving the surety on said bond has been made or filed herein.

Wherefore said receiver prays for an order approving the said bond and the surety thereon, and providing that such order of approval made now shall have the same effect as though entered on June 25, 1906, the date of the execution and filing of said bond.

CHARLES E. HAMILTON, *Receiver.*

Upon reading the foregoing petition, it is hereby ordered that said bond of said receiver, executed and filed herein on the 25th day of June, 1906, with the surety thereon, be and the same is hereby approved, and that the making and filing of this order now shall have the same force and effect, and give to all acts heretofore done by said Charles E. Hamilton, as receiver of said defendant herein, the same force and effect as though this order approving said bond had been made and filed herein on the 25th day of June, 1906, the date of the execution and filing of said bond.

Dated July 9, 1909.

OSCAR HALLAM,
Judge of District Court.

151 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD AND CO., Plaintiff,
vs.
EVANS, JOHNSON, SLOAN CO., Defendant.

It appearing to the Court that the above entitled action has been commenced to wind up said defendant corporation and to enforce payment of the individual liability of its stockholders to its creditors, and that it is proper and necessary that an order limiting the time for creditors to present their claims be made and notice thereof be given in this action, it is hereby ordered that the creditors of said defendant corporation be and they are hereby required, within six months after the date of the first publication of this order and notice, to exhibit their claims against said defendant and become parties to this action by filing with the clerk of this court a verified complaint setting forth their respective claims against said defendant corporation, and by delivering copies of their said respective complaints to E. H. Morphy, one of the attorneys for said plaintiff, at his office at No. 718 Manhattan Building, in the city of St. Paul in said Ramsey County, within said six months after the date of the first publication of this order and notice, and that in default thereof they shall be precluded from receiving any of the benefits of this action, and from sharing in any part of the fund collected in this action and distributed under the judgment of the Court herein.

Ordered further that any party to this action may interpose objection to any of the claims filed and exhibited herein by filing with the clerk of said Court a verified answer thereto, setting forth such objections, and by serving a copy of such answer upon the claimant whose claim is objected to, or upon his attorney, and upon said E. H.

Morphy, one of said attorneys for said plaintiff, at any time within said six months, or within thirty days thereafter, and that any and all claims to which objection is not so made within said time shall stand admitted and allowed without proof. It is also ordered that the trial of issues of law and fact formed upon such objections and answers to said claims shall be brought on for trial and hearing, and said claims so filed and presented shall be examined and adjusted, at a General Term of said District Court, appointed to be held at the court house in the city of St. Paul in said Ramsey County, on
152 Monday, the first day of April, 1907, at the opening of said court on that day, or as soon thereafter as counsel can be heard.

Ordered, further, that notice hereof be given by publishing a copy of this order and notice in the Daily Pioneer Press, a daily newspaper published in said Ramsey County, once each week for three successive weeks.

Dated at St. Paul, this 28th day of June, 1906.

OSCAR HALLAM,
District Judge.

JAMES E. TRASK AND
E. H. MORPHY,
Attorneys for Plaintiff, St. Paul, Minn.

Endorsed: No. 93657. State of Minnesota, County of Ramsey, District Court. Marshall Field and Co., vs. Evans, Johnson, Sloan Co. Order limiting time for creditors to *preserve* their claims. Filed June 28, 1906. Edward G. Rogers, Clerk. By G. A. Johnson, Deputy.

STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

STATE OF MINNESOTA,
County of Ramsey, ss:

E. H. Morphy, being first duly sworn, upon oath deposes and says that he is one of the attorneys of the above named plaintiff, and one of the attorneys for Charles E. Hamilton, as Receiver of the defendant herein; that at the City of St. Paul, County of Ramsey and State of Minnesota, on Wednesday, the 11th day of July, 1906, he deposited a true and correct copy of the order made herein on the 28th day of June, 1906, in the general postoffice enclosed in an envelope, postage prepaid, which envelope contained said copy of said order and was addressed and directed to each of the creditors of the said defendant corporation, whose postoffice address is known to this affiant, and

to James E. Trask, Attorneys for said Receiver, Charles E. Hamilton, and to Charles E. Hamilton.

That a copy of said order so mailed to each of said creditors is hereto attached and marked "Exhibit A" to this affidavit; that a list of said creditors, together with their respective postoffice
153 addresses as known, as aforesaid, is hereto attached and marked "Exhibit B" to this affidavit.

E. H. MORPHY.

Subscribed and sworn to before me this 12th day of July, 1906.
[NOTARIAL SEAL.] S. I. LOUGHRAN,
Notary Public, Ramsey County, Minnesota.

My commission expires January 29, 1909.

EXHIBIT "A."

(Same as order filed June 28, 1906, limiting the time for filing intervening complaints, immediately preceding).

154 "B."

EXHIBIT MARKED "B" REFERRED TO IN THE ANNEXED AFFIDAVIT.

List of Creditors and Their Respective Addresses of the Defendant Evans, Johnson, Sloane Company, Referred to in the Annexed Affidavit.

Minnesota Loan & Trust Company, Minneapolis, Minn.
Loeb & Schoenfeldt, 451 Broadway, New York, N. Y.
Charles Kohlman, 236 Church Street, New York, N. Y.
E. H. Titus, c-o Lord & Taylor, New York, N. Y.
F. L. Loeb, 1001 Market Street, Philadelphia, Pa.
Geo. S. Evans, 451 Broadway, New York, N. Y.
Louis Loeb, 451 Broadway, New York, N. Y.
Geo. F. Martens, 71-73 Nassau Street, New York, N. Y.
Chas. Simons Sons, 512 Broadway, New York, N. Y.
Security Bank, Minneapolis, Minn.
John Haydock, 332 Broadway, New York, N. Y.
Wm. Meyer & Co., 483 Broadway, New York, N. Y.
Veith & Brandt, 8th & Sycamore, New York, N. Y.
Times Newspaper Co., Minneapolis, Minn.
Goldbrandson Pub. Co., Minneapolis, Minn.
Rasmussen Pub. Co., Minneapolis, Minn.
Svenska Folket Tideing, Minneapolis, Minn.
Minneapolis Freie Presse Herold, Minneapolis, Minn.
155 Pioneer Press, St. Paul, Minn.
Svenska-American Posten, Minneapolis, Minn.
Frank M. Shaw, Minneapolis, Minn.
Minneapolis General Electric Co., Minneapolis, Minn.
Rome G. Brown, Minneapolis, Minn.

General Printing Co., Minneapolis, Minn.
Minneapolis Tribune Co., Minneapolis, Minn.
John C. Uhrlaub, New York, N. Y.
Biltrite Mfg. Co., Minneapolis, Minn.
Arlington Ladies Neckwear Co., 564 Broadway, New York, N. Y.
The Allen-Lane Co., 266 Devonshire Street, Boston, Mass.
Arnold Schiff & Co., 54 White Street, New York, N. Y.
The Anthony & the Scoville Co., Binghampton, N. Y.
Anchor Silver Plate Co., St. Paul, Minn.
Albany Card & Paper Co., 315 Hamilton St., New York, N. Y.
Ad. Abrahams & Co., 592 Broadway, New York, N. Y.
M. E. Brooks, 2nd & Columbia, Philadelphia, Pa.
Amana Society, Homestead, Ia.
Blumenthal & Erdman, 476 Broadway, New York, N. Y.
Belfast Linen Handkerchief Co., 27 White St., New York, N. Y.
Burton Brothers, 384 Broadway, New York, N. Y.
W. & S. Blackinton, North Attleboro, Mass.
Bailey, Green & Elger, 74 Mercer St., New York, N. Y.
Jonas Brook & Bro., 349 Broadway, New York, N. Y.
Blum Brothers, 1001 Market St., Philadelphia, Pa.
Boesneck, Broesal & Co., 466 Broome St., New York, N. Y.
Wm. Bens Co., Providence, R. I.
Brown, Durrell Co., Kingston & Essex St., Boston, Mass.
Brock & Co., 22 Park Place, New York, N. Y.
Burke & James, 118 W. Jackson Blvd., Chicago, Ill.
F. C. Barton, 54 Franklin St., New York, N. Y.
Beverly Co., 311 Broadway, Milwaukee, Wis.
Alex Bernheimer & Co., 260 W. Broadway, New York, N. Y.
Bretzford Mfg. Co., 412 Broadway, New York, N. Y.
Curtis Ledger Fixture Co., 126 Franklin St., Chicago, Ill.
Chicago Folding Box Co., Washington & Union Sts., Chicago, Ill.
Castle Braid Co., 522 Broadway, New York, N. Y.
Carter-Crume Co., Niagara Falls, Niagara Falls, N. Y.
Colgate & Co., 5th & John Sts., New York, N. Y.
Chicago & Kenosha Hosiery Co., Kenosha, Wis.
156 A. W. Cowan, 573 Broadway, New York, N. Y.
Colwell Worsted Mills, Providence, R. I.
G. Cramer Dry Plate Co., St. Louis, Mo.
Doran, Bagnell & Co., North Attleboro, Mass.
Dieckerhoff, Raffloer & Co., 364 Broadway, New York, N. Y.
Dennison Mfg. Co., 128 Franklin St., Chicago, Ill.
Durlach Brothers, 171 Franklin St., New York, N. Y.
Duff & Benton, 119 Franklin St., Chicago, Ill.
Dreyfus & Cohen, 536 Broadway, New York, N. Y.
Thomas Dalby Co., Watertown, Mass.
M. Doob & Sons, 541 Broadway, New York, N. Y.
J. C. Dowd & Co., 524 Broadway, New York, N. Y.
Wm. Ewert & Sons, 115 Franklin St., New York, N. Y.
Samuel Eiseman & Co., 71 Grand St., New York, N. Y.
James Elliott & Co., 370 Broadway, New York, N. Y.

C. H. Eden Co., Attleboro, Mass.
Eastman Kodak Co., Rochester, N. Y.
John V. Farwell Co., Monroe & Market Sts., Chicago, Ill.
Marshall Field & Co., Adams St., Chicago, Ill.
Robert Ferguson, 44 Walker St., New York, N. Y.
Fessenden & Co., 100 Friendship St., Providence, R. I.
Geo. Frost Co., 551 Fremont St., Boston, Mass.
Floridine Mfg. Co., 42 Franklin St., New York, N. Y.
A. Feldman & Co., 111 Greene St., New York, N. Y.
Louis H. Foster, 2nd St. & Columbia Ave., Philadelphia, Pa.
Gilbert Mfg. Co., 83 White St., New York, N. Y.
H. Gilbert Mfg. Co., 60 Lispenard St., New York, N. Y.
A. Goldstein Co., 18 White St., New York, N. Y.
Greenbaum Brothers, 10th St. & Washington Ave., Philadelphia, Pa.
Goldsmith & Harzberg, 43 Sabin St., Providence, R. I.
G. Gennert, 23 E. Lake St., Chicago, Ill.
E. G. Higgins Co., 274 Main St., Worcester, Mass.
Hydeman & Lassner, 498 Broadway, New York, N. Y.
Holden & Fuller, Palmer, Mass.
The Housh Co., 15 E. Concord St., Boston, Mass.
Ipp Weisberg & Safferson, 23 Lispenard St., New York, N. Y.
International Silver Co., Meriden, Conn.
International Art Pub. Co., 165 Washington St., New York, N. Y.
Enos F. Jones Chemical Co., 51 Jay St., New York, N. Y.
Johnson, Hayward & Piper, 109 Kingston St., Boston, Mass.
Kraus & Glauberg, 621 Broadway, New York, N. Y.
157 The Kora Co., 525 Broome St., New York, N. Y.
Knauth, Nachod & Kuhne, 13 Williams St., New York, N. Y.
Kingston Mills, Front St. & Columbia Ave., Philadelphia, Pa.
Charles Kohlman & Co., 236 Church St., New York, N. Y.
Kraut & Finver Brothers, 34 White St., New York, N. Y.
Kahn & Weitheimer, 456 Broadway, New York, N. Y.
Novelty Cloak Co., 149 Market St., Chicago, Ill.
Kennedy, Suffel & Andrews, Minneapolis, Minn.
Lindeke-Warner & Sons, St. Paul, Minn.
Edwin Lowe & Co., 116 Chestnut St., Providence, R. I.
Levi Simson & Co., 514 Broadway, New York, N. Y.
S. Lipitz, 183 E. 7th St., St. Paul, Minn.
Liberty Carter Works, 413 Broadway, New York, N. Y.
Lord & Taylor, 20th & Broadway, New York, N. Y.
J. P. Logan & Son, 329 Canal St., New York, N. Y.
Liberty Soap Co., Kingsbury & Superior, Chicago, Ill.
W. E. Mayhew, 177 E. 4th St., St. Paul, Minn.
Gerhard, Mennen Chemical Co., Newark, N. J.
Mills & Gibb, Broadway & Grand, New York, N. Y.
Carl Morr, 136 Water St., New York, N. Y.
Marx & Co., 830 Broadway, New York, N. Y.
Manitowoc Aluminum Novelty Co., Manitowoc, Wis.
John Mehl & Co., Jersey, N. J.

Manhattan Soap Co., 550 W. 36th St., New York, N. Y.
Multiscope & Film Co., 41 State St., Chicago, Ill.
Macey Hook & Eye Co., Grand Rapids, Mich.
Mann Summer Clothing Co., 104 Bleeker St., New York, N. Y.
New Haven Clock Co., New Haven, Conn.
National Papetrie Co., Springfield, Mass.
Nonotuck Silk Co., Chicago, Ill.
Niagara Textile Co., Lockport, N. Y.
O'Callaghan & Fedden, 54 Worth St., New York, N. Y.
Owen Brothers & Hillson Co., 19 Washington St., Boston, Mass.
Oppenheim & Baruch & Co., 603 Broadway, New York, N. Y.
Omo Mfg. Co., Middletown, Conn.
C. B. Pinney, 323 Dearborn St., Chicago, Ill.
Pacific Novelty Co., 687 Broadway, New York, N. Y.
Pairpont Corporation, New Bedford, Mass.
Pabst Chemical Co., 176 E. Huron St., Chicago, Ill.
V. Henry Rothschild Co., Leonard St. & W. Broadway, New York, N. Y.
Rotograph Co., 771 E. 164th St., New York, N. Y.
158 Rutland Wrapper & Skirt Co., Rutland, Vt.
I. Rosenschein, 41 E. 11th St., New York, N. Y.
Rothschild Bros. & Co., 466 Broadway, New York, N. Y.
Raudintz & Pollitz, Hoboken, N. J.
Spool Cotton Co., 80 White St., New York, N. Y.
Sanitol Chemical & Lab. Co., St. Louis, Mo.
Sundheimer Brothers, 475 Broadway, New York, N. Y.
Herman Scheuer, 435 Broome St., New York, N. Y.
A. Stein & Co., 218 Market St., Chicago, Ill.
Stone & Co., 220 Franklin St., Chicago, Ill.
Simons & McGill, 58 White St., New York, N. Y.
Sperry & Alexander Co., 300 Broadway, New York, N. Y.
S. Sanford & Sons, Amsterdam, N. Y.
Stern Bros. & Co., 33 Gold St., New York, N. Y.
Samstag & Hilder Bros., 557 Broadway, New York, N. Y.
Chas. Simon's Sons, 512 Broadway, New York, N. Y.
Strouss, Eisendrath & Co., 207 Jackson St., Chicago, Ill.
Henry Schadwald, 3rd & Huntington Sts., Philadelphia, Pa.
Shepard Mfg. Co., 104 Franklin St., Melrose Highlands, Mass.
Wm. Strauss, 42 W. 15th St., New York, N. Y.
Seneca Camera Mfg Co., Rochester, N. Y.
W. A. C. Dry Plate Co., 2005 Lucas Place, St. Louis, Mo.
The Thread Agency, 260 Broadway, New York, N. Y.
Raphael Tuck Sons & Co., 122 Fifth Ave., New York, N. Y.
Searle Mfg. Co., Troy, N. Y.
Max & S. Zucker, 64 University Place, New York, N. Y.
Union Carpet Lining Co., 179 Devonshire St., Boston, Mass.
United States Woven Label Co., Elm St. near Bleeker, Elm Square Bldg., New York, N. Y.
John G. Bogler, 622 Chestnut St., Philadelphia, Pa.
Valyu Garment Co., La Crosse, Wis.
Warren Featherbone Co., Three Oaks, Mich.

Wiener Brothers, 520 Broadway, New York, N. Y.
Ziff & Sugarman, 236 Monroe St., Chicago, Ill.
Strawbridge & Clothier, 8th & Market Sts., Philadelphia, Pa.
Wm. Fischman, 14 Washington Place, New York, N. Y.
A. Knoblaugh & Sons, Minneapolis, Minn.
Z. Pope Voss, Minneapolis, Minn.
Sterling Mfg. Co., Minneapolis, Minn.
Frank W. Pinska, Minneapolis, Minn.

Endorsed: No. 93657. In District Court, Second Judicial District. Marshall Field & Co., vs. Evans, Johnson, Sloane Co. Affidavit of mailing of order to creditors. Filed Sept. 4, 1906. Edward G. Rogers, Clerk, by G. A. Johnson, Deputy.

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Affidavit of Publication.

STATE OF MINNESOTA,
County of Ramsey, ss:

W. H. Farnham, being duly sworn, on oath says, that the annexed printed notice in the matter of Marshall Field and Co. vs. Evans, Johnson, Sloan Co., hereto attached, was taken from the columns of the newspaper known as The Daily Pioneer Press and was published in said newspaper for three consecutive weeks, first on Monday, the 2nd day of July, 1906, and thereafter on Monday of each week, until and including the 16th day of July, 1906. That during the whole time of said publication affiant was the secretary of The Pioneer Press Company, which was during said time, and still is a corporation under the Laws of the State of Minnesota, and the proprietor, printer and publisher of said newspaper. That for more than one year prior to the commencement of said publication therein, said newspaper has been, and still is, a daily newspaper, issued, printed and published on each day of the week, in the English language, in column and sheet form, equivalent in space to more than four pages with five columns of at least seventeen and three-quarters inches long to each page, from a known and established office and place of publication equipped with skilled workmen and necessary material for preparing and printing the same, to-wit: The Pioneer Press Building in the City of St. Paul, Ramsey County, Minnesota, from whence it purported to be, was, and is, issued; and that during all said time it contained and still contains general and local news, comment, and miscellany, not in any way duplicating any other publication, and not entirely made up of patents or plate matter, nor wholly of advertisements; and that during all said time it has been, and still is, circulated in and near its said place of issue and publication to the extent of more than two hundred and forty copies regularly delivered to paying subscribers. That on the ninth day of March, 1906, the affidavit of W. H. Farnham, secretary of said corporation publisher of said newspaper was filed in the office of the County Auditor of said Ramsey County for the purpose of complying with Section 5516 of the Revised Laws, 1905.

W. H. FARNHAM.

Subscribed and sworn to before me this 17th day of July, 1906.
E. H. SWAIN,
Notary Public, Ramsey County, Minn.

My Commission expires July 1, 1908.

Printer's fee $11.65.

160 Endorsed: No. 93657. State of Minnesota, County of Ramsey, District Court. Marshall Field and Co. vs. Evans, Johnson, Sloan Co. Affidavit of publication. Filed Aug. 29, 1906. Edward G. Rogers, Clerk, by G. A. Johnson, Deputy. James E. Trask and E. H. Morphy, Attorneys for Receiver.

STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD AND CO., Plaintiff,
vs.
EVANS, JOHNSON, SLOAN CO., Defendant.

(Same as order of June 28, 1906, limiting time for filing intervening complaints by creditors, p. 31 of original, p. 151 of transcript and p. — of printed record.)

161 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

Petition for an Assessment.

Charles E. Hamilton, as receiver of said defendant, for his petition herein for a ratable assessment upon all parties liable as stockholders, or upon account of any stock, of said defendant, respectfully represents to the Court and alleges:

First. That this action is brought by said plaintiff on its own behalf and on behalf of all the creditors of said plaintiff who shall present their claims and become parties to this action, for the appointment of a receiver of the property and effects which said defendant shall or may acquire subsequent to the commencement of this action, and of the causes of action to recover upon and enforce for the benefit of creditors the individual statutory liability of all the stockholders of said defendant, with authority to convert such assets into cash and to collect the said individual liability by means of a ratable assessment adjudged and rendered by the Court herein

upon all the capital stock of said defendant and upon all parties liable as stockholders, and to determine and adjudge the claim of plaintiff herein, and the claims of all the other creditors of
162 said defendant, and the amount of each claim, and to distribute the fund so collected, less the costs and expenses of this action and of the receivership herein, among all the creditors whose claims shall be duly presented and tried, adjudged and allowed by the Court in this action;

That the summons and complaint in this action were duly and personally served on said defendant corporation on the 28th day of May, 1906; that said defendant duly appeared in said action; that said Court duly acquired jurisdiction of the parties to and the subject matter of said action, and that thereafter such further proceedings were duly had in said action that on the 25th day of June, 1906, said Court duly made and filed its order herein appointing your petitioner, Charles E. Hamilton, as receiver, with the usual powers and directions, of all the property, things in action and effects of said defendant, Evans, Johnson, Sloane Company, if any, which it has acquired since the commencement of this action, and of the causes of action to enforce payment of the said individual or statutory liability of the stockholders of said defendant to its creditors, said receiver being expressly authorized by said order of appointment to take the necessary steps to collect and enforce payment of said individual or statutory liability of the stockholders of said defendant for its debts by means of such ratable assessment; that thereupon said receiver immediately qualified, and entered upon, and is now in discharge of his duties as such receiver.

That during all the times hereinafter stated said plaintiff was, ever since has been, and now is a corporation duly organized, created and existing under and by virtue of the laws of the State of Illinois.

That during all the times hereinafter stated said defendant was, ever since and now is a corporation duly organized, created and existing under and by virtue of title two (2) of Chapter 34 of the General Statutes of Minnesota for the year 1878, and the laws amendatory thereof and supplementary thereto; and that the general nature of defendant's business, as stated in its articles of incorporation is to buy, sell, trade, manufacture and deal in goods, wares and merchandise of every kind and nature, which said business said defendant continued to carry on from the date of its organization until it was adjudged a bankrupt, as hereinafter set forth.

That said defendant was so organized and created on or about the 19th day of April, 1902, under the name of Evans, Munzer Pickering Company, by which name said defendant was known until about the 10th day of May, 1904, when said defendant duly
163 changed its name to Evans, Johnson, Sloane Company, under which last mentioned name said defendant continued to transact its said business, and by which it has ever since been and now is generally known.

Second. That on the 25th day of September, 1905, and for more than eighteen (18) months prior thereto, said defendant was, ever

since has been and now is insolvent. That on said 25th day of September, 1905, Lindeke, Warner & Sons, W. E. Mayhew and Simon Lifpitz, as creditors of said defendant, under and pursuant to the Act of Congress of 1898, known as the National Bankruptcy Act, and the amendments thereto, made and caused to be filed in the United States District Court of the District of Minnesota their petition, as such creditors, alleging, among other things, that said defendant was insolvent, and had committed an act of bankruptcy on the 19th day of August, 1905, by then making a general assignment and transfer of all its property to one Wm. E. Muse for the benefit of its creditors, and praying that said defendant be adjudged a bankrupt.

That said petition with a writ of subpœna duly issued out of said United States District Court was duly served upon said defendant and said Court duly acquired jurisdiction over the parties to and the subject matter of said bankruptcy proceedings; and thereupon such further proceedings were duly had in said matter, under said petition, that on the 23rd day of October, 1905, said United States District Court duly made its order and rendered its judgment in said matter adjudging said defendant a bankrupt; and thereafter such other and further proceedings were duly had in said matter that on the 13th day of November, 1905, said United States District Court duly made and filed its order therein appointing Albert W. Lindeke, Norman Fetter and William E. Muse trustees in bankruptcy of said bankrupt defendant; and immediately thereupon said trustees duly qualified, took possession of all the property and assets of said defendant, and entered upon the discharge of their duties of such trustees; that thereafter such further proceedings were duly had in said bankruptcy proceedings that on the 24th day of February, 1906, said Bankruptcy Court duly made and filed its order therein discharging defendant as such bankrupt, under the said bankruptcy act which provides, among other things, that the bankruptcy of a corporation shall not release its stockholders from their individual liability as such stockholders.

Third. That said trustees in bankruptcy have taken possession of and converted into cash all the property and assets which de-
164 fendant had at the time of the commencement of this action, except its book accounts and bills receivable, that the total amount received by said trustees for said property so converted into cash is $63,600.00, that said book accounts and bills receivable are worth not to exceed $3,000.00 and that said trustees are about to sell said book accounts and bills receivable and close up said bankruptcy proceedings and procure their discharge as such trustees.

That long prior to the date of the filing of said petition in bankruptcy, as aforesaid, said defendant was, ever since has been and now is indebted to divers persons, firms and corporations, for goods, wares and merchandise sold and delivered to said defendant in its said business, all of which indebtedness including the claim of said plaintiff herein, has been filed and allowed in said bankruptcy proceedings; that the total amount of such indebtedness, exclusive of the indebtedness of defendant which arose subsequent to the

filing of said petition in bankruptcy and was not scheduled in time for proof and allowance, exceeds the sum of $250,000.00; that the total amount of all the dividends paid and to be paid from said bankruptcy proceedings upon the aforesaid indebtedness therein filed and allowed will not exceed twenty cents on the dollar; and that for the payment of the balance of said indebtedness after said dividends shall have been applied, and of such additional indebtedness as has arisen subsequently to the filing of said petition in bankruptcy and was not scheduled in said bankruptcy proceedings, said defendant has, at the time of the commencement of this action, no assets, property or fund whatever, except the super-added or individual liability of the stockholders of said defendant upon the shares of its capital stock owned by each stockholder as hereinafter set forth.

Fourth. That said defendant by the terms of its articles of -corporation has a capital stock of $250,000.00 divided into 2500 shares of the par value of $100.00 a share, all of which stock was issued and outstanding prior to the time when the earliest of defendants' said indebtedness arose.

That on and prior to about May, 1904, the persons and parties named in the following list of stockholders, marked Schedule A became, ever since have been and now are owners and holders of the capital stock of said defendant, each of the number of shares thereof and of the par value set opposite their respective names in said Schedule A, and that the place of residence of said stockholders is set opposite their respective names in said schedule as your petitioner is informed and verily believes.

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SCHEDULE A.

Name of Stockholder.	Residence.	No. of shares owned by each.	Par value.
William A. Alden,	Minneapolis, Minn.	26	$2,600.00
Rudolph Altschul,	Minneapolis, Minn.	1	100.00
John F. Evans,	Minneapolis, Minn.	275	27,500.00
John F. Elwell,	Minneapolis, Minn.	36	3,600.00
William E. Johnson,	Minneapolis, Minn.	175	17,500.00
Rudolph W. Munzer,	Minneapolis, Minn.	274	27,400.00
Margareta Wankey,	Minneapolis, Minn.	10	1,000.00
Adam Pickering,	Minneapolis, Minn.	275	27,500.00
Edwin Sloane,	Minneapolis, Minn.	1	100.00
Norman Fetter,	St. Paul, Minn.	100	10,000.00
Ferdinand Loeb,	New York, N. Y.	527	54,000.00
Louis Krower,	515 Broadway, N. Y.	10	1,000.00
S. G. Beals,	395 Broadway, N. Y.	50	5,000.00
Geo. F. Martens,	Nassau St., N. Y.	100	10,000.00
J. H. Dunham,	New York, N. Y.	50	5,000.00
M. C. Migel and Co.,	43 Green St., N. Y.	5	500.00
Burton Bros. Co.,	384 Broadway, N. Y.	25	2,500.00
E. T. Mason and Co.,	28 Green St., N. Y.	25	2,500.00

Franz Mertz, 33 Green St., N. Y.	10	1,000.00
Samstag & Hilder Bros., 557 Broadway, N. Y.	25	2,500.00
Pelegran and Meyer, 113 Spring St., N. Y.	25	2,500.00
B. Levison, Jr., New York, N. Y.	30	3,000.00
G. Vintschger, 193 West St., N. Y.	50	5,000.00
J. M. Brady and Co., New York, N. Y.	50	5,000.00
A. Stein and Co., 218 Market St., Chicago	10	1,000.00
Lillian E. Secor, 372 6th Ave., N. Y.	5	500.00
Strauss Eisendrath & Co., Chicago, Ill.	25	2,500.00
Charles Falkenberg, New York, N. Y.	25	2,500.00
Weiner Bros., 520 Broadway, N. Y.	5	500.00
Albert Palaska, New York, N. Y.	10	1,000.00
Loeb and Schoenfeld, 457 Broadway, N. Y.	50	5,000.00
John F. Dezell, 58 White St., N. Y.	10	1,000.00
Arthur Selig, 71 Grand St., N. Y.	60	5,000.00
G. F. Simon, New York, N. Y.	25	2,500.00
Ballin & Bernheimer, 515 Broadway, N. Y.	100	10,000.00
William Meyers, New York, N. Y.	10	1,000.00
E. W. Strouss, 240 Jackson St., Chicago	10	1,000.00
Louis Eisendrath, 240 Jackson St., Chicago	15	1,500.00
Chas. Simons Sons, New York, N. Y.	50	5,000.00

166 Fifth. And on information and belief your petitioner further states and alleges that the stockholders named in the following list of stockholders, marked Schedule B, after acquiring their said stock, as aforesaid, for the purpose of avoiding their liability as owners thereof, made pretended transfers of their said stock to the transferrees, respectively, set forth in said Schedule B, the number of the said shares so transferred by each stockholder and the names of the respective transferrees to whom said stock was so transferred being set down in said Schedule B opposite the names of said stockholders, respectively, so transferring their stock.

Schedule B.

Name of stockholder.	Number of shares.	Name of transferree.
Rudolph W. Munzer	274	Edwin Sloane.
Adam Pickering	137½	John F. Evans.
Adam Pickering	137½	William E. Johnson.
John F. Elwell	36	William E. Johnson.
Arthur L. Selig	50	Max Mayer.
G. A. Simon	25	Berard Schwab.
Balling & Bernheimer	75	J. Edward Gleason.
William Meyers	10	F. F. Kreuder.
E. W. Strouss	10	Joseph Strouss.
Louis Eisendrath	15	Joseph Strouss.
Chas. Simons' Sons	50	Meyer Heigberg.
Louis Krower	10	Samuel Berger.
S. G. Beals	50	Leonard S. Beals.
Geo. F. Martens	100	William E. Johnson.

That each and all of the foregoing pretended transfers were made after said defendant corporation had become insolvent, as aforesaid, and after its capital stock had become greatly impaired, and after a large part of the aforesaid indebtedness had arisen, and that the same and each thereof are and were without consideration, made for the aforesaid purpose to insolvent transferrees with the understanding and agreement between the parties to said respective transfers that said respective transferrees should not thereby acquire any beneficial interest in said stock, and that said respective transferrees should be and remain the owners of the entire beneficial interests in the said stock so transferred as aforesaid.

Sixth. And on information and belief your petitioner further alleges and states that the aforesaid stockholders, named in the following list of stockholders, marked Schedule C, under
167 column headed "Name of Stockholder," for the purpose of avoiding their liability on their said stock, took and hold the said stock owned by them, respectively, as aforesaid, and as set opposite their respective names in said Schedule C, not in their own names, but in the names of their respective agents for that purpose and that the respective names of the persons so acting as agents of said stockholders, respectively, in holding said stock, are set opposite the names of the respective stockholders in said Schedule C under column headed "Name of Agent." That said agents so took and held in their respective names said stock set opposite their respective names in said Schedule C, and owned by said stockholders as aforesaid, with the understanding and agreement between said stockholders and the persons named in said Schedule C as their respective agents; that the latter shall not have any beneficial interest whatever in said stock, or any part thereof, but that the entire beneficial interest in said stock shall be owned by the persons, corporations and firms so owning and holding said stock as aforesaid, and whose names are set down in said Schedule C under column headed "Name of Stockholder."

SCHEDULE C.

Name of Stockholder.	Name of agent.	Number of shares owned.	Par value.
J. H. Dunham & Co.	Geo. W. Hugo	50	$5,000.00
M. C. Migel & Co.	A. W. Fitzpatrick	5	500.00
Burton Bros. Co.	F. L. St. John	25	2,500.00
E. T. Mason & Co.	W. G. Ryan	25	2,500.00
Samstag and Hilder Bros.	Benjamin Brower	25	2,500.00
Wm. A. Alden	Mary E. Day	25	2,500.00
Pelgran and Meyer	Herman Schiffer	25	2,500.00
Ferdinand Loeb	William A. Alden	264	26,400.00
Ferdinand Loeb	John F. Elwell	263	26,300.00

Seventh. And on information and belief your petitioner further alleges that the said stockholders named in the following

list of stockholders, marked Schedule D, with the intent of avoiding their liability as owners of the said stock set opposite their respective names in said Schedule D (and owned by them, respectively, as set forth in the foregoing list of stockholders marked Schedule A) after they had subscribed for and taken and paid for and become the owners each of his said stock, and after said defendant was in failing circumstances and its capital stock had become greatly impaired, without notice to or the knowledge or consent of said plaintiff or of any of the creditors of said defendant, and without authority from the articles of incor-
168 poration or by-laws of said defendant, or from its board of directors, entered into a pretended agreement with certain officers of said defendant whereby said stockholders named in said Schedule D were released from their liability upon said stock, respectively, and their stock, and the stock of each of them, was surrendered to said defendant, and whereby as a part of said pretended agreement and a part of the said transaction of the surrender of said stock, said stockholders named in said Schedule D were paid out of the assets of said defendant, each an amount equal to the par value of their said stock subscribed for, taken and owned by them as aforesaid, said defendant thereby withdrawing its capital and assets and distributing it among the said stockholders in Schedule D without making any adequate provision for the payment of its said indebtedness to plaintiff or the other creditors of said defendant.

SCHEDULE D.

Name of stockholder.	Number of shares owned and surrendered.	Par value.
Pelgran & Meyer	25	$2,500.00
B. Levison	30	3,000.00
Norman Fetter	100	10,000.00

Eighth. That the stockholders owning and holding, as aforesaid, $112,300.00 of said capital stock of said defendant reside within the State of Minnesota, and are within the jurisdiction of this Court; but that the owners of nearly all of said $112,300.00 of said capital stock are wholly insolvent, the owners of nearly all of the balance of said $112,300.00 of said stock are of doubtful solvency, and that not to exceed $2,000.00 or $3,000.00 can be collected from said resident stockholders owning said $112,300.00 of said capital stock.

That the stockholders owning and holding the balance, or $137,700.00 of said capital stock, as set forth in said Schedule A, reside out of the State of Minnesota, as shown by said Schedule A, and that they are substantially all solvent and able to pay the liability on the stock owned by them, respectively, as shown by Schedule A.

That the said stockholders owning said $137,700.00 of said liability are not subject to the jurisdiction of this Court and cannot by summons or process be brought within the jurisdiction of this

Court, except the jurisdiction which this Court upon proper order and notice acquires over all said stockholders to adjudge and order a ratable assessment upon all stockholders and all the stock of said defendant and against all parties liable thereon, and to direct
169 enforcement of the payment of such assessment by action against said stockholders, whether resident or non-resident and in whatever state or jurisdiction they may be found.

That the probable amount which can be collected from said non-resident stockholders owning said $137,700.00 of said capital stock through or by means of a judgment or order of assessment by the Court herein is the sum of $126,000.00. That the said indebtedness of said defendant is for goods, wares and merchandise purchased by said defendant from its creditors, for a portion of which indebtedness said defendant has given its promissory notes; and that the probable amount of said indebtedness and all the indebtedness of said defendant, after deducting all the dividends paid or to be paid upon said indebtedness from said bankruptcy proceedings, is the sum of $200,000.00 or more, and that on the 28th day of June, 1906, said Court duly made and filed its order herein limiting the time within which creditors may file their claims herein, which time will not expire until more than six months after the date thereof.

That nearly all of the aforesaid stockholders who are solvent and have means and property from which their liability can be collected have, as your petitioner is informed and believes, transferred or otherwise disposed of their stock, as hereinbefore set forth, for the purpose of denying their liability and avoiding payment thereof; and that a large number of actions involving considerable expense will be required to enforce payment of the liability of said solvent stockholders. That the costs and expenses of this action and of the receivership herein and of collecting the liability of the stockholders of said defendant and the necessary actions by said receiver to enforce payment of said assessment will probably exceed the sum of $25,000.00. That said defendant had at the time of the commencement of this action no property or assets whatever, and that it is necessary to resort to the enforcement of payment of the superadded or constitutional liability of the stockholders of said defendant.

That more than ninety-five per cent (95%) of the solvent liability, or liability due from stockholders of said defendant who have means with which to pay, is of non-resident stockholders who are not subject to and cannot be brought within the jurisdiction of this Court, except its jurisdiction to adjudge and order a ratable assessment, as aforesaid; and that the only way to enforce said ninety-five per cent of said liability due from stockholders who have the means with which to pay is by an action brought, as this
170 action is brought, the appointment of a receiver therein, as aforesaid, and by levying herein of a ratable assessment upon all stock and against all the stockholders of said defendant, as prayed for in the complaint in said action and as prayed for in this petition.

Wherefore, your petitioner prays for the order and judgment of the Court herein as follows:

1. That the Court ascertain the probable amount of the said indebtedness, added to the probable amount of the costs and expenses of said action and said receivership, and the probable amount which can be collected from said stockholders, and all persons or parties liable, as such, on said stock, and if the probable amount of said indebtedness and costs and expenses is equal to or exceeds the probable amount which can be collected from said stockholders, that the Court direct and levy as a ratable assessment upon each share of said stock, and against each of said stockholders and persons liable on said stock, an amount equal to their full maximum liability as stockholders of said defendant or on account of any of its capital stock and equal to the par value of said stock.

2. If the probable amount of said indebtedness and expenses is less than the probable amount of the solvent liability of said stockholders, then that the Court direct and levy a ratable assessment upon each share of said stock, and against each of said stockholders and persons, firms and corporations liable on account of said stock, amounting to such a percentage of this maximum statutory liability as may be deemed sufficient to pay said probable indebtedness and costs and expenses, such assessment on each of said shares of said stock to be enforced against and collected from the owners thereof and the persons or parties liable thereon or on account thereof.

3. That the Court order and direct payment of the amounts so assessed upon account of said stock to said receiver herein within such time as the Court may determine and designate in said order, and appoint and fix a time and place for hearing this petition and application, and direct such notices of said hearing to be given as may be deemed proper. That the Court grant such other, further or different relief as may be deemed just and proper.

JAMES E. TRASK AND
E. H. MORPHY,
Attorneys for Petitioner.

171 STATE OF MINNESOTA,
County of Ramsey, ss:

Charles E. Hamilton, being first duly sworn, deposes and says that he is the receiver of said defendant Evans, Johnson, Sloane Company, and the petitioner named in the foregoing petition. That he has read the foregoing petition and that the same is true except to those matters therein stated on information and belief, and as to those matters that he believes it to be true.

CHARLES E. HAMILTON.

Subscribed and sworn to before me this 2nd day of July, 1906.

[NOTARIAL SEAL.] JAMES E. TRASK,
Notary Public, Ramsey County, Minnesota.

My commission expires Feb. 20, 1909.

Petition for Assessment. Filed July 6th, 1906. Edward G. Rogers, Clerk, by G. A. Johnson, Deputy.

STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

Upon the petition of Charles E. Hamilton, as receiver of Evans, Johnson, Sloane Company, the defendant in the above entitled action, which petition has been duly filed in the office of the Clerk of said District Court herein, praying, among other things, that the Court, by order herein, direct and levy as an assessment herein upon each share of the stock of said defendant and against each of its stockholders and persons and parties liable on said stock an amount equal to their full maximum liability as stockholders of said defendant, and equal to the par value of said stock, or, in the event of the probable amount of the indebtedness of said defendant, together with the costs and expenses of this action and the receivership herein, being less than the probable amount of the solvent liability of all the said stockholders of said defendant and persons and parties liable on said stock, then that the Court direct and levy a ratable assessment upon each share of the said stock and against each of the said stockholders and persons liable, amounting to such a percentage of his maximum liability as such a stockholder as the Court may deem proper after hearing as by law required.

172 It is hereby ordered, that the said petition be heard at a special term of said Court to be held at the Court House in the city of St. Paul, in the county of Ramsey, Minnesota, on the 1st day of September, 1906, at ten o'clock in the forenoon on that day, or as soon thereafter as counsel can be heard, at which time the Court will receive and consider such proofs by affidavit, or otherwise, as may then be offered on said petition, or in relation to the matter therein contained, by or on behalf of said receiver, or any of the creditor or stockholders of said defendant corporation, or any parties interested therein.

Ordered, further, that said receiver give notice of such hearing by causing a copy of this order to be published once each week for three successive weeks in the Daily Pioneer Press, a daily newspaper printed and published in said Ramsey county and by causing a copy of said order to be mailed to each of the stockholders and creditors of said defendant corporation whose postoffice address is known to said receiver, or his attorneys, at least thirty days prior to the date of said hearing.

Dated at St. Paul, Minnesota, July 6th, 1906.

OSCAR HALLAM,
District Judge.

JAMES E. TRASK AND
E. H. MORPHY,
Attorneys for Petitioner, St. Paul, Minnesota.

Endorsed: No. 93657. Order for Hearing and Notice of Hearing on Petition for Assessment. Filed July 6, 1906. Edward G. Rogers, Clerk, by G. A. Johnson, Deputy.

STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Plaintiff.

STATE OF MINNESOTA,
County of Ramsey, ss:

E. H. Morphy, being first duly sworn, upon oath deposes and says that he is one of the attorneys of the above named plaintiffs and one of the attorneys for Charles E. Hamilton, as receiver of said defendant herein; that at the city of St. Paul, county of Ramsey
173 and state of Minnesota, on Wednesday, the 11th day of July, 1906, he deposited a true and correct copy of the order made herein on the petition of Charles E. Hamilton, receiver, and dated the 6th day of July, 1906, in the general postoffice, enclosed in an envelope, postage prepaid, which envelope contained said copy of said order, and was addressed and directed one to each of the stockholders and creditors of the said defendant corporation whose postoffice address is known to the said Charles E. Hamilton, said receiver, or to James E. Trask and this affiant, his attorneys.

That a copy of said order so mailed to each of said stockholders and creditors is hereto attached, marked "Exhibit A," to this affidavit; that the list of said stockholders and said creditors, together with their respective postoffice addresses as known, as aforesaid, and to which said order was so mailed, is hereto attached and marked "Exhibit B" to this affidavit.

E. H. MORPHY.

Subscribed and sworn to before me this 12th day of July, A. D. 1906.

[NOTARIAL SEAL.] S. I. LOUGHRAN,
Notary Public, Ramsey County, Minnesota.

My commission expires January 29th, 1909.

"EXHIBIT A."

Referred to in the Annexed Affidavit.

(Same as order of July 6, 1906, setting time for hearing on petition for assessment, immediately preceding.)

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"B."

Exhibit Marked "B," Referred to in the Annexed Affidavit.

List of Stockholders and Their Respective Addresses of the Defendant, Evans, Johnson, Sloane Company, Referred to in the Annexed Affidavit.

William A. Alden, Minneapolis, Minn.
Rudolph Altschul, Minneapolis, Minn.
John F. Evans, Minneapolis, Minn.
John F. Elwell, Minneapolis, Minn.
William E. Johnson, Minneapolis, Minn.
Rudolph W. Munzer, Minneapolis, Minn.
175 Margareta Wankey, Minneapolis, Minn.
Adam Pickering, Minneapolis, Minn.
Edwin Sloane, Minneapolis, Minn.
Norman Fetter, St. Paul, Minn.
Ferdinand Loeb, New York, N. Y.
Louis Krower, 515 Broadway, New York, N. Y.
S. G. Beals, 395 Broadway, New York, N. Y.
Geo. F. Martens, 71-73 Nassau St., New York, N. Y.
J. H. Dunham, New York, N. Y.
M. C. Migel & Co., 43 Green St., New York, N. Y.
Burton Bros. Co., 384 Broadway, New York, N. Y.
E. T. Mason & Co., 28 Green St., New York, N. Y.
Franz Merz, 33 Green St., New York, N. Y.
Samstag & Hilder Bros., 557 Broadway, New York, N. Y.
Pelagram & Meyer, 113 Spring St., New York, N. Y.
B. Levison, Jr., New York, N. Y.
G. Vintschger, 193 West St., New York, N. Y.
J. M. Brady & Co., New York, N. Y.
A. Stein & Co., 218 Market St., Chicago, Ill.
Lillian E. Secor, 372 6th Ave., New York, N. Y.
Strauss, Eisendrath & Co., Chicago, Ill.
Charles Falkenberg, New York, N. Y.
Weiner Bros., 520 Broadway, New York, N. Y.
Albert Palaska, New York, N. Y.
Loeb & Schoenfeld, 457 Broadway, New York, N. Y.
John F. Dezell, 58 White St., New York, N. Y.
Arthur Selig, 71 Grand St., New York, N. Y.
G. A. Simon, New York, N. Y.
Ballin & Bernheimer, 515 Broadway, New York, N. Y.

William Meyers, New York, N. Y.
E. W. Strouss, 240 Jackson St., Chicago, Ill.
Louis Eisendrath, 240 Jackson St., Chicago, Ill.
Chas Simons' Sons, New York, N. Y.
Edward H. Titus, New York, N. Y.
George W. Hugo, c-o J. H. Durham & Co., New York, N. Y.
Herman Schiffer, c-o Pelgram & Meyer, 113 Spring St., New York, N. Y.
A. W. Fitzpatrick, c-o M. C. Migel & Co., 41-43 Green St., New York, N. Y.
G. F. Simon, New York, N. Y.
F. L. St. John, c-o Burton Bros. Co., 384 Broadway, New York, N. Y.
W. G. Ryan, c-o E. T. Mason & Co., 28 Green St., New York, N. Y.
176 Benjamin Brower, 557 Broadway, New York, N. Y.
Mary E. Day, c-o W. A. Allen, Minneapolis, Minn.
John G. Vogler, Philadelphia, Pa.
Julius Kayser & Co., New York, N. Y.
Boston Dry Goods Co., Boston, Mass.
Ernest H. Behrens, New York, N. Y.
L. Krower, c-o Krower & Tinberg, 515 Broadway, New York, N. Y.
King, Beals & Co., 395 Broadway, New York, N. Y.
Bernard Schwab, 54 E. 109th St., New York, N. Y.
Max Mayer, 140 W. 83rd St., New York, N. Y.
J. Edward Gleason, c-o Ballin & Bernheimer, 515 Broadway, New York, N. Y.
F. F. Kreuder, c-o Wm. Meyer & Co., New York, N. Y.
Leonard S. Beals, c-o King, Beals & Co., 395 Broadway, New York, N. Y.
Meyer Heizberg, 216 E. 57th St., New York, N. Y.
Samuel Berger, c-o Krower & Tinberg, 515 Broadway, New York, N. Y.
Alfred V. Hamburg, Minneapolis, Minn.

List of Creditors and their Respective Addresses of the Defendant, Evans, Johnson, Sloane Company, Referred to in the Annexed Affidavit.

(Same as list in proof of mailing of order limiting time to file claims, p. 33 of original p. 154 of transcript, p. — of printed record.)

177 *Affidavit of Publication.*

STATE OF MINNESOTA,
County of Ramsey, ss:

W. H. Farnham, being duly sworn, on oath says that the annexed printed notice in the matter of Marshall Field and Company vs. Evans, Johnson, Sloane Co., hereto attached, was taken from

the columns of the newspaper known as The Daily Pioneer Press and was published in said newspaper for 3 successive weeks, first on Saturday, the 7th day of July, 1906, and thereafter on Saturday of each week, until and including the 21st day of July, 1906. That during the whole time of said publication affiant was the secretary of The Pioneer Press Company, which was during said time, and still is, a corporation under the laws of the State of Minnesota, and the proprietor, printer and publisher of said newspaper. That for more than one year prior to the commencement of said publication therein said newspaper has been, and still is, a daily newspaper, issued, printed and published on each day of the week, in the English language, in column sheet form, equivalent in space to more than four pages, with five columns of at least seventeen and three-quarters inches long to each page, from a known and established office and place of publication, equipped with skilled workmen and necessary material for preparing and printing the same, to-wit: The Pioneer Press Building, in the city of St. Paul, Ramsey county, Minnesota, from whence it purported to be, was, and is, issued; and that during all said time it contained and still contains general and local news, comment and miscellany, not in any way duplicating any other publication, and not entirely made up of patents or plate matter, nor wholly of advertisements; and that during all said time it has been, and still is, circulated in and near its said place of issue and publication to the extent of more than two hundred and forty copies regularly delivered to paying subscribers. That on the ninth day of March, 1906, the affidavit of W. H. Farnham, secretary of said corporation, publisher of said newspaper, was filed in the office of the County Auditor of said Ramsey county for the purpose of complying with Section 5516 of the Revised Laws, 1905.

W. H. FARNHAM.

Subscribed and sworn to before me this 21st day of July, 1906.

E. H. SWAIN,
Notary Public, Ramsey County, Minn.

My commission expires 1 July, 1908.

Printer's fee, $12.40.

178 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

(Same as order of July 6, 1906, setting time for hearing on receiver's petition for assessment, p. 50 of original, p. 171 of transcript, p. — of printed record.)

179 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD AND CO., a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE CO., a Corporation, Defendant.

The above entitled action and matter duly came on to be heard before said Court on the 1st day of September, 1906, pursuant to an order of said Court made and dated July 6, 1906, and duly filed and entered herein, upon the petition of Charles E. Hamilton, as receiver of said defendant, praying for an assessment herein by said Court upon each share of the capital stock and against those liable as stockholders of said defendant; James E. Trask and E. H. Morphy appearing as attorneys for said receiver; J. R. Corrigan appearing for Edwin Sloane, one of the stockholders of said defendant, there being no other appearance, and was then with the consent of all parties duly continued to the 4th day of September, 1906, when said action and matter again duly came before said Court and was duly heard upon said petition, the same attorneys appearing for said receiver, there being no other appearance, and proof of due service of notice of hearing upon said petition having been made, and the Court having received and duly considered all the evidence presented:

It is ordered, that an assessment equal to the par value of
180 each share of the capital stock of said defendant, to-wit: the sum of one hundred ($100.00) dollars on each and every share of the capital stock of said defendant, be, and the same is hereby, assessed upon and against each and every share of said capital stock and upon and against the persons or parties liable as stockholders of said defendant for, upon or on account of such shares of stock; that each and every person or party liable as such stockholder of said defendant pay to said Charles E. Hamilton, as receiver of said defendant, at his office, in the City of St. Paul, in said Ramsey County, State of Minnesota, within thirty days after date of this order, the sum of one hundred ($100.00) dollars for and on account of each and every share of said stock for or upon which said persons or parties are liable as stockholders of said defendant; and that said receiver forthwith proceed to collect the several amounts due from the several persons or parties liable as stockholders of said defendant under the terms of this order, and hold the amounts thus collected until the further order of the Court herein.

Ordered, further, that in case any person or party liable as a stockholder of said defendant shall fail to pay the amount hereby assessed against the share or shares of stock held or owned by such stockholders, or upon or on account of which he may be liable, within the time hereinbefore specified, said receiver is hereby authorized and directed forthwith to institute and prosecute such action or actions, or other proceedings against such person or persons, party or parties liable, in any Court having jurisdiction, whether in the State of

Minnesota or elsewhere, which said receiver may deem necessary or proper for the recovery of the amount due from such person or persons under the terms of this order.

Ordered, further, that said receiver give notice of this order by mailing a copy of the same within five (5) days from the date hereof to each stockholder of said defendant whose name and address is known to said receiver or to his attorneys, or either of them.

Dated at St. Paul, September 4th, 1906.

OSCAR HALLAM,
District Judge.

Endorsed: No. 93657. Order of Assessment. Filed Sept. 4, 1906. Edward G. Rogers, Clerk, by G. A. Johnson, Deputy. Recorded in Book 21 of Decrees, page 10.

181 *Order and Decree of Assessment as Recorded in Book* 21 *of Decrees, Page* 10.

(Same as order of Sept. 4, 1906, making assessment, p. 62 of original p. 179 of transcript, p. — of printed record.)

182 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD AND CO., a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE CO., a Corporation, Defendant.

STATE OF MINNESOTA,
County of Ramsey, ss:

E. H. Morphy, being first duly sworn, upon oath deposes and says that he is one of the attorneys of the above named plaintiff; that at the City of St. Paul, in the County of Ramsey and State of Minnesota, on Friday, the 7th day of September, 1906, he deposited a true and correct copy of the order of assessment made in the above
183 entitled action, dated the 4th day of September, 1906, in the general postoffice, enclosed in an envelope, postage prepaid, which envelope contained said copy of said order, and was addressed and directed to each stockholder of the above named defendant, Evans, Johnson, Sloane Company, whose name and address was on said 4th and said 7th days of September, 1906, and is known to the receiver in said action, Charles E. Hamilton, or to James E. Trask and this affiant, as attorneys for said receiver, or either of them, at the place of his postoffice address or known to said receiver or his attorneys.

That a copy of said order so mailed to each of said stockholders as aforesaid is hereto attached, marked Exhibit "A," and is made a part of this affidavit.

E. H. MORPHY.

Subscribed and sworn to before me this 7th day of September, A. D. 1906.

[NOTARIAL SEAL.] JNO. M. BRADFORD,
Notary Public, Minnesota.

My commission expires Jan. 1st, 1909.

"A."

EXHIBIT MARKED "A" REFERRED TO IN THE AFFIDAVIT OF E. R. MORPHY, HERETO ATTACHED.

(Same as order of assessment of Sept. 4, 1906, making assessment, p. 62 of original, p. 179 of transcript, p. — of printed record.)

184 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

STATE OF MINNESOTA,
County of Ramsey, ss:

E. H. Morphy, being first duly sworn, upon oath deposes and says that he is one of the attorneys of the above named plaintiff; that at the City of St. Paul, in the County of Ramsey and State of Minnesota, on Friday the 7th day of September, 1906, he deposited a true and correct copy of the order of assessment made in the above entitled action, dated the 4th day of September, 1906, in the general postoffice, enclosed in an envelope, postage prepaid, which envelope contained said copy of said order, and was addressed and directed to each stockholder of the above named defendant, Evans, Johnson, Sloane Company, whose name and address was on said 4th and 7th days of September, 1906, and is, known to the receiver in said action, Charles E. Hamilton, or to James E. Trask and this affiant, as attorneys for said receiver, or either of them, at the place of his postoffice address as known to said receiver or his attorneys.

That a copy of the order so mailed to each of said stockholders is hereto attached, marked "Exhibit A," to this affidavit; that a list of said stockholders, together with their respective postoffice addresses as known, as aforesaid, and to which said order was so mailed, is hereto attached, marked "Exhibit B," to this affidavit.

E. H. MORPHY.

Subscribed and sworn to before me this 5th day of March, 1908.

S. I. LOUGHRAN,
Notary Public, Ramsey County, Minnesota.

My commission expires Jan. 29, 1909.

Endorsed: Filed March 13, 1908. Matt Jensen, Clerk, by B. M. Schorn, Deputy.

185 "EXHIBIT A."

(Same as order of assessment of Sept. 4, 1906, p. 62 of original, p. 179 of transcript, p. — of printed record.)

186 Schedule Marked "B" Referred to in the Annexed Affidavit of E. H. Morphy.

List of Stockholders and Their Respective Addresses of the Defendant Evans, Johnson, Sloane Company, Referred to in the Annexed Affidavit.

William A. Alden, Minneapolis, Minn.
Rudolph Altschul, Minneapolis, Minn.
John F. Evans, Minneapolis, Minn.
John F. Elwell, Minneapolis, Minn.
William E. Johnson, Minneapolis, Minn.
Rudolph W. Munzer, Minneapolis, Minn.
Margareta Wankey, Minneapolis, Minn.
Adam Pickering, Minneapolis, Minn.
Edwin Sloane, Minneapolis, Minn.
Norman Fetter, St. Paul, Minn.
Ferdinand Loeb, New York, N. Y.
187 Louis Krower, 515 Broadway, New York, N. Y.
S. G. Beals, 395 Broadway, New York, N. Y.
Geo. F. Martens, 71-73 Nassau St., New York, N. Y.
J. H. Dunham, New York, N. Y.
M. C. Migel & Co., 43 Green St., New York, N. Y.
Burton Bros. Co., 384 Broadway, New York, N. Y.
E. T. Mason & Co., 28 Green St., New York, N. Y.
Franz Merz, 33 Green St., New York, N. Y.
Samstag & Hilder Bros., 557 Broadway, New York, N. Y.
Pelagram & Meyer, 113 Spring St., New York, N. Y.
B. Levison, Jr., New York, N. Y.
G. Vintschger, 193 West St., New York, N. Y.
J. M. Brady & Co., New York, N. Y.
A. Stein & Co., 218 Market St., Chicago, Ill.
Lillian E. Secor, 372 6th Ave., New York, N. Y.
Strauss, Eisendrath & Co., Chicago, Ill.
Charles Falkenberg, New York, N. Y.
Weiner Bros., 520 Broadway, New York, N. Y.
Albert Palaska, New York, N. Y.
Loeb & Schoenfeld, 457 Broadway, New York, N. Y.
John F. Dezell, 58 White St., New York, N. Y.
Arthur Selig, 71 Grand St., New York, N. Y.
G. A. Simon, New York, N. Y.
Ballin & Bernheimer, 515 Broadway, New York, N. Y.
William Meyers, New York, N. Y.
E. W. Strouss, 240 Jackson St., Chicago, Ill.
Louis Eisendrath, 240 Jackson St., Chicago, Ill.

Chas. Simons' Sons, New York, N. Y.
Edward H. Titus, New York, N. Y.
George W. Hugo, c-o J. H. Durham & Co., New York, N. Y.
Herman Schiffer, c-o Pelgram & Meyer, 113 Spring St., New York, N. Y.
A. W. Fitzpatrick, c-o M. C. Migel & Co., 41-43 Green St., New York, N. Y.
G. F. Simon, New York, N. Y.
F. L. St. John, c-o Burton Bros. Co., 384 Broadway, New York, N. Y.
W. G. Ryan, c-o E. T. Mason & Co., 28 Green St., New York, N. Y.
Benjamin Brower, 557 Broadway, New York, N. Y.
Mary E. Day, c-o W. A. Allen, Minneapolis, Minn.
John G. Vogler, Philadelphia, Pa.
Julius Kayser & Co., New York, N. Y.
188 Boston Dry Goods Co., Boston, Mass.
Ernest H. Behrens, New York, N. Y.
L. Krower, c-o Krower & Timberg, 515 Broadway, New York, N. Y.
King Beals & Co., 395 Broadway, New York, N. Y.
Bernard Schwab, 54 E. 109th St., New York, N. Y.
Max Mayer, 140 W. 83rd St., New York, N. Y.
J. Edward Gleason, c-o Ballin & Bernheimer, 515 Broadway, New York, N. Y.
F. F. Kreuder, c-o Wm. Meyer & Co., New York, N. Y.
Leonard S. Beals, c-o King, Beals & Co., 395 Broadway, New York, N. Y.
Meyer Heizberg, 216 E. 57th St., New York, N. Y.
Samuel Berger, c-o Krower & Tinberg, 515 Broadway, New York, N. Y.
Alfred V. Hamburg, Minneapolis, Minn

STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, Plaintiff,

vs.

EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

Take notice that an application will be made to the above mentioned Court at special term thereof to be held at the Court House in the City of St. Paul, County of Ramsey, State of Minnesota, on Saturday, the 5th day of January, 1907, at the hour of ten o'clock in the forenoon, or so soon thereafter as counsel can be heard, for an order modifying and changing the order made herein on the 28th day of June, 1906, and extending the time up to and until the 16th day of February, 1907, within which all creditors of the defendant corporation above named who have not already done so be permitted to exhibit their respective claims against said defendant and become parties to said action by filing with the clerk of said Court their respective verified complaints, setting forth their respective claims against the said defendant and by delivering copies

of their respective complaints to E. H. Morphy, one of the attorneys, for the plaintiff, at his office No. 718 Manhattan Building, in the said City of St. Paul, said county, on or before Saturday, the 16th day of February, 1907, and in default thereof, that said creditors be precluded from receiving any of the benefits of this
189 action and from sharing in any part of the fund which may be collected in said action, and also extending the time within which any party to this action or any creditor who may become a party thereto may interpose objections to any of the claims filed and exhibited herein, by filing with the Clerk of said Court a verified answer thereto, as provided by the terms of said order of the 28th day of June, 1906, and for such further and other order as to said Court may seem just, on the ground that there are upwards of forty creditors of said defendant whose claims aggregate more than $20,000, who desire to file their respective claims, as provided by said order of the 28th day of June, 1906, and become parties to this action and otherwise obey said order but have been precluded from filing their claims by reason of the delay in closing up the bankrupt estate of Evans, Johnson, Sloane Company, and receiving the final dividends from said bankrupt estate, by reason of which delay the said creditors have been unable to ascertain or know what dividends would be paid and what amounts they would have to credit on their respective claims, and that there has not been sufficient time for said creditors to file their respective claims since the payment of the final dividend in said bankrupt estate which was on or about the 20th of December, 1906.

And take notice that on such application will be read the pleadings and proceedings herein, order made on said 28th day of June, 1906, copy of which is hereto attached and made a part hereof, and the affidavit of E. H. Morphy, copy of which is hereto attached and made a part hereof.

Dated at St. Paul, Minnesota, this 27th day of December, 1906.

E. H. MORPHY,
JAMES E. TRASK,
Attorneys for Plaintiff.

STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

STATE OF MINNESOTA,
County of Ramsey, ss:

E. H. Morphy, of the City of St. Paul, County of Ramsey, and State of Minnesota, being first duly sworn upon oath deposes
190 and says that he and James E. Trask are attorneys for the above named plaintiff; that an order was made herein on the 28th day of June, 1906, copy of which is hereto attached and made a part hereof, which order was duly published, the first publication being on the 3*th* of June, 1906; that pursuant to said order complaints in intervention to the amount of $85,000 have been filed

in the office of the Clerk of said District Court and copies served upon this affiant as one of the attorneys for plaintiff pursuant to said order; that the final account of the trustees in bankruptcy of Evans, Johnson, Sloane Company said defendant, was allowed on the 23rd day of November last, and the final dividend sheet prepared thereafter and checks for the final dividends were not prepared and mailed to the various creditors of said corporation until on or about the 20th day of December, 1906; that many of said creditors who have not filed their respective claims have made inquiries by letter from this affiant and from this affiant's firm as to when said final dividend would be paid and the amount thereof, as these various creditors desired to have their various accounts credited with the amount of the final dividend and know just what amount they would file their claims herein for, but that affiant and his firm were not able to furnish said information until said final dividend was made; that on account of the delay in the closing of the said estate, a number of said creditors have not been able to obey said order of the 28th day of June, 1906; that affiant has had many communications from creditors and attorneys desiring time within which to file the claims of the various creditors; that within the last three days forty-four claims against said defendant, aggregating over $20,000 were sent to the office of Morphy, Ewing & Bradford, with instructions to file complaints at intervention; that there is no evidence before this affiant or the said firm of Morphy, Ewing & Bradford as to whether or not the claimants who have sent their claims for complaints in intervention are firms or corporations and no data from which to gather that information; that all of said creditors reside in the east, some in the State of New York, some in the State of Missouri and some in Rhode Island; that it is a physical impossibility for the creditors to get their claims filed herein before the 30th day of December, 1906; that affiant has been requested to make this application by the plaintiff and the receiver herein and by the forty creditors whose claims have been placed in the hands of Morphy, Ewing & Bradford, and by many attorneys and creditors who desire to file their complaints herein, and affiant makes this affidavit

191 in support of an application to extend the time for filing complaints herein and for modification of order of the 28th of June, 1906, in such respect as to this Court may seem meet.

E. H. MORPHY.

Subscribed and sworn to before me this 28th day of December, 1906.

[NOTARIAL SEAL.] S. I. LOUGHRAN,
Notary Public, Ramsey County, Minnesota.

My commission expires January 29, 1909.

To Messrs. Kerr & Fowler, Attorneys for Defendant, and to Messrs. Cohen, Atwater & Shaw, S. Meyer, Rome G. Brown, James R. Corrigan, E. F. Mearkle, Attorney for Sloane; Norman Fetter, Walter L. Chapin, Morphy, Ewing & Bradford, and to Sander N. Nelson, John M. Bradford, P. W. Guilford and James E. Trask, Attorneys for various creditors who have filed their claims in intervention herein.

Endorsed: No. 93657. State of Minnesota, County of Ramsey, District Court, Second Judicial District. Marshall Field & So. vs. Evans, Johnson, Sloane Company, a corporation. Notice of motion, affidavit in support, and copy of order of 28th June, 1906. Due personal service of a copy of the within notice of motion, affidavit and copy order admitted 28 December, 1906. Filed January 9, 1907. Edward G. Rogers, clerk, by G. A. Johnson, deputy. Attorneys for various creditors.

Due personal service of a copy of the within notice of motion, affidavit and copy order admitted this 28th day of December, 1906. Morphy, Ewing & Bradford, attorneys for certain intervening creditors. James E. Trask and E. H. Morphy, attorneys for receiver, C. E. Hamilton. Jno. M. Bradford, attorney for certain intervening creditors. Walter L. Chapin, attorney for Loeb, Schoenfeld
192 & Co. Norman Fetter, attorney for Lindeke, Warner & Sons James E. Trask, S. N. Nelson, attorneys for certain intervening creditors.

Due personal service of a copy of the written notice of motion admitted at Minneapolis, this 28 December, 1906. P. W. Guilford, attorney for Theodore Schafuss. The Anchor Silver Plate Co. S. Meyers, attorney for F. W. Pinska, L. Pope Vose, A. Kneblard & Son. E. F. Mearkle, attorney for Seanly Park. Cohen, Atwater & Shaw, attorneys for certain creditors. Kerr & Fowler, attorneys for defendants. J. R. Corrigan, attorney for Sloane. Fifield, Fletcher, Larimore & Fifield, attorneys for Knauth, Nachad & Kuhne and other creditors.

STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & Co., Plaintiff,
vs.
EVANS, JOHNSON, SLOAN Co., Defendant.

It appearing to the Court that the above entitled action has been commenced to wind up said defendant corporation and to enforce payment of the individual liability of its stockholders to its creditors, and that it is proper and necessary that an order limiting the time for creditors to present their claims be made and notice thereof be given in this action, it is hereby ordered that the creditors of said defendant corporation be and they are hereby required, within six months after the date of the first publication of this order and notice, to exhibit their claims against said defendant and become parties to this action by filing with the clerk of this court a verified complaint setting forth their respective claims against said defendant corporation, and by delivering copies of their said respective complaints to E. H. Morphy, one of the attorneys for said plaintiff, at his office at No. 718 Manhattan Building, in the city of St. Paul in said Ram-

sey County, within said six months after the date of the first publication of this order and notice, and that in default thereof they shall be precluded from receiving any of the benefits of this action, and from sharing in any part of the fund collected in this action and distributed under the judgment of the Court herein.

Ordered further that any party to this action may interpose objection to any of the claims filed and exhibited herein by filing with the clerk of said Court a verified answer thereto, setting forth
193 such objections, and by serving a copy of such answer upon the claimant whose claim is objected to, or upon his attorney, and upon said E. H. Morphy, one of said attorneys for said plaintiff, at any time within said six months, or within thirty days thereafter, and that any and all claims to which objection is not so made within said time shall stand admitted and allowed without proof. It is also ordered that the trial of issues of law and fact formed upon such objections and answers to said claims shall be brought on for trial and hearing, and said claims so filed and presented shall be examined and adjusted, at a General Term of said District Court, appointed to be held at the court house in the city of St. Paul in said Ramsey County, on Monday, the first day of April, 1907, at the opening of said court on that day, or as soon thereafter as counsel can be heard.

Ordered, further, that notice hereof be given by publishing a copy of this order and notice in the Daily Pioneer Press, a daily newspaper published in said Ramsey County, once each week for three successive weeks.

Dated at St. Paul, this 28th day of June, 1906.

OSCAR HALLAM,
District Judge.

JAMES E. TRASK AND
E. H. MORPHY,
Attorneys for Plaintiff, St. Paul, Minn.

STATE OF MINNESOTA,
County of Ramsey, ss:

Sander N. Nelson, on being first duly sworn, deposes and says that at the City of Minneapolis, Hennepin County, Minnesota, on Friday, December 28th, 1906, and before five o'clock in the afternoon of said day, he personally served the annexed notice of motion, affidavit in support and copy of order of 28th June, 1906, on Rome G. Brown, attorney for certain creditors of defendant within named Evans, Johnson, Sloane Company, by handing to and leaving with Miss Ilancie Field, a person of suitable age and discretion, at the office of said Rome G. Brown in the City of Minneapolis, Minnesota, a true and correct copy of said motion, affidavit in support and copy of order of 28th June, 1906.

SANDER N. NELSON.

Subscribed and sworn to before me this 31st day of December, 1906.

[NOTARIAL SEAL.]

S. I. LOUGHRAN,
Notary Public, Ramsey County, Minnesota.

My commission expires January 29, 1909.

194 STATE OF MINNESOTA,
County of Ramsey, ss:

Sander N. Nelson, on being first duly sworn, deposes and says that at the City of Minneapolis, Hennepin County, Minnesota, on Friday, December 28th, 1906, and before five o'clock in the afternoon of said day, he personally served the annexed notice of motion, affidavit in support and copy of order of 28th June, 1906, on E. F. Mearkle, attorney for Security Bank of Minneapolis, a creditor of the defendant Evans, Johnson, Sloane Company, the defendants within named, by handing to and leaving with C. S. Rhodes, a person of suitable age and discretion, at his office in the City of Minneapolis, Minnesota, a true and correct copy of said motion, affidavit in support and copy of order of 28th June, 1906.

SANDER N. NELSON.

Subscribed and sworn to before me this 31st day of December, 1906.

[NOTARIAL SEAL.] S. I. LOUGHRAN,
Notary Public, Ramsey County, Minnesota.

My commission expires January 29, 1909.

STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

Upon the application of the above named plaintiff, and upon hearing read the affidavit of E. H. Morphy, and on inspection of the files and records herein, and it appearing that notice of motion together with copies of said affidavit, were duly and properly served on the attorneys for the defendant corporation, the receiver herein, and the various creditors who have filed their complaints in intervention and have become parties hereto.

It is ordered that the order made herein on the 28th day of June, 1906, requiring the creditors of said defendant corporation within six months from the date of the first publication of said order to file their respective claims against the defendant corporation and become parties to this action, be and the same is hereby amended and said creditors of said corporation be and they are hereby given until
Saturday, the 16th day of February, 1907, to exhibit their
195 claims against the defendant corporation and to *before* parties to this action by filing with the Clerk of this Court verified complaints setting forth their respective claims against the defendant corporation and by delivering copies of said complaints in intervention to E. H. Morphy, one of the attorneys for said plaintiff, at his office, 718 Manhattan Building, St. Paul, Ramsey County, Minnesota,

on or before the said 16th day of February, 1907, and in default thereof such creditors shall be precluded from receiving any of the benefits of this action and from sharing in any part of the funds collected herein for distribution under judgment of this Court.

And it is further ordered that any party to this action, or any creditors of said defendant corporation, who may become parties hereto, may interpose objections to any of the claims filed herein, as provided by the said order of the 28th of June, 1906, such objections to be filed and served at any time prior to the said 16th day of February, 1907, or within twenty days thereafter.

And it is further ordered that notice of this order be given by publishing a copy of the same in The Daily Pioneer Press, a daily newspaper published in said Ramsey County, once each week for three successive weeks, and except as herein modified all the terms and conditions of said order of the 28th of June, 1906, be and they are herein incorporated and become a part of this order.

Dated at St. Paul, Minnesota, this 5th day of January, 1907.

OSCAR HALLAM,
District Judge.

Endorsed: No. 93657. Order extending time to file complaint in intervention. Filed Jan. 8, 1907. Matt Jensen, clerk, by T. J. Greene, deputy.

Affidavit of Publication.

STATE OF MINNESOTA,
County of Ramsey, ss:

W. H. Farnham, being duly sworn, on oath says, that the annexed printed notice in the matter of Marshall Field and Company, a corporation, plaintiff, vs. Evans, Johnson, Sloane Company, a corporation, defendant, hereto attached, was taken from the columns of the newspaper known as The Daily Pioneer Press, and was published in said newspaper for 3 successive weeks, first on Wednesday, the 9th day of January, 1907, and thereafter on Wednesday of each week, until and including the 23rd day of January, 1907. That

196 during the whole time of said publication affiant was the secretary of The Pioneer Press Company, which was during said time, and still is, a corporation under the Laws of the State of Minnesota, and the proprietor, printer and publisher of said newspaper. That for more than one year prior to the commencement of said publication therein, said newspaper has been, and still is, a daily newspaper, issued, printed and published on each day of the week, in the English language, in column and sheet form, equivalent in space to more than four pages with five columns of at least seventeen and three quarters inches long to each page, from a known and established office and place of publication equipped with skilled workmen and necessary material for preparing and printing the same, to-wit: The Pioneer Press Building in the City of St. Paul, Ramsey County, Minnesota, from whence it purported to be, was, and is, issued; and

that during all said time it contained and still contains general and local news, comment, and miscellany, not in any way duplicating any other publication, and not entirely made up of patents or plate matter, nor wholly of advertisements; and that during all said time it has been, and still is, circulated in and near its said place of issue and publication to the extent of more than two hundred and forty copies regularly delivered to paying subscribers. That on the ninth day of March, 1906, the affidavit of W. H. Farnham, secretary of said corporation publisher of said newspaper was filed in the office of the County Auditor of said Ramsey County for the purpose of complying with Section 5516 of the Revised Laws, 1905.

W. H. FARNHAM.

Subscribed and sworn to before me this 23rd day of January, 1907.

E. H. SWAIN,
Notary Public, Ramsey County, Minnesota.

My commission expires 1 July, 1908.

Printers' fee $10.15.

STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

(Same as order of Jan. 8, 1907, extending time for filing claims of creditors p. 79 of original p. 195 of transcript p. — of printed record).

197 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOAN COMPANY, a Corporation, Defendant.

The above entitled action duly came on to be heard before said Court at a general term thereof held at the court house, in the City of St. Paul, in said Ramsey County, on the 11th day of April, 1907, for the purpose of examining and adjusting the claims filed and presented herein by the creditors of said defendant and to determine and adjudge the respective amounts at which the respective claims so filed and presented are entitled to be allowed, and the amounts which said creditors are entitled to recover herein upon their respective claims. James E. Trask and E. H. Morphy appeared for said

plaintiff prosecuting said action on its own behalf and on behalf of all other creditors who have come into said action and filed and presented their claims, and Walter Chapin appeared for Loeb & Schoenfeld and asked for a continuance of said action as to the claim of said Loeb and Schoenfeld, and the Court with consent of all parties continued the matter of the hearing of said claim of Loeb and Schoenfeld to the May term of said Court.

And it appearing that this action was brought by said plaintiff on its own behalf and on behalf of all other creditors of said defendant who should duly present their claims and become parties to this action, to sequestrate the property, if any, acquired by said defendant subsequent to the commencement of this action, and the stock and things in action of said defendant, and to appoint a receiver therefor and of the rights of causes of action to recover upon and enforce for the benefit of said creditors the individual liability of all the stockholders of said defendant by means of a ratable assessment ordered and adjudged by said Court upon all the capital stock of said defendant and against all parties liable as stockholders; and to determine and adjudge the claim of said plaintiff herein and the claims of all the other creditors of said defendant, and the amount of each claim; and it appearing from the evidence that at the time of the commencement of this action the property of said defendant was being administered in bankruptcy proceedings then pending in the United States District Court for the District of Minnesota, which proceedings have been closed and the final dividend paid, and that the total amount paid in divi-
198 dends in said bankruptcy proceedings was less than 22 per cent of the face of said claims.

And it appearing that the summons and complaint in this action were duly and personally served on said defendant corporation on the 28th day of May, 1906, that thereafter said defendant duly appeared in said action, and that said Court duly acquired jurisdiction over the parties to and the subject matter of this action; and that thereafter such further proceedings were duly had in said action that on the 25th day of June, 1906, said Court duly made and entered its order and decree herein appointing Charles E. Hamilton, as receiver, with the usual powers and directions, of all the property of said defendant, if any, acquired subsequent to the commencement of this action, and of the stock and rights or causes of action to enforce payment of the said individual liability of the stockholders of said defendant, and that said receiver thereupon immediately qualified and entered upon the discharge of his duties as such receiver; and that thereafter and on the 4th day of September, 1906, said Court upon the petition of said receiver, and upon due notice and hearing made its order herein assessing the capital stock of said defendant and requiring each stockholder to pay to said receiver the sum of $100.00 for and on account of each and every share of said stock owned by each stockholder within thirty days after the date of said order.

And it appearing that on the 28th day of June, 1906, said Court duly made and entered an order herein requiring creditors to pre-

sent and prove their claims by filing with the Clerk of said Court their verified complaints setting forth their respective claims, within the time provided in said order, or be barred from sharing in the benefits of this action, and that all claims so filed and proved, unless objected to as provided in said order, should stand admitted and allowed without further proof; and that due notice of said order requiring creditors so to file and present their claims has been given as required by said order, and that the time limited by order of Court herein for filing claims ended and expired on the 16th day of February, 1907.

And it appearing that said plaintiff sets forth and alleges in its complaint herein, among other things, that between the 8th day of May and the 15th day of July, 1905, said plaintiff, at the defendant's special instance and request, sold and delivered to said defendant goods and merchandise worth and of the reasonable value of $3,065.50, which said sum said defendant promised and agreed to pay therefor, and that although long since due said sum has not been paid nor any part thereof except the sum of $305.55 paid
199 by the trustees appointed in the matter of the bankruptcy of said defendant corporation, and, in the prayer for relief, among other things, demands judgment against said defendant for the sum of $2,758.95, and interest thereon; and it further appearing that on the 25th day of June, 1906, plaintiff's attorneys duly made and caused to be filed herein their affidavit that no answer or demurrer to said complaint or copy of either has ever been served on plaintiff's attorneys, or either of them, and that plaintiff's said claim has not been objected to but stands admitted, and that no answer or objection has been made to any of said claims except the claim of said Loeb and Schoenfeld.

And it appearing from the files in this action and from the testimony offered and received upon said hearing, and the Court hereby finding that the persons, corporations and copartnerships whose names are set forth in the "schedule of claims," hereto attached and made a part hereof, are creditors of said defendants, that, with the exception of said Loeb & Schoenfeld, they are the only creditors and all the creditors who have joined in said action and filed their claims herein; that the amount for which each of said claims *were* filed, when each of said claims arose, and the nature thereof is correctly set forth in said schedule of claims under column headed, "Nature of Claim, Amount, When it Arose;" that each of said creditors is entitled to be allowed herein the amount for which his claim was filed, except in those cases where creditors have, since the filing of their claims, been paid the final divdend thereon by the trustees in said bankruptcy proceedings, and in those cases said creditors are entitled to be allowed the amounts for which their respective claims were filed less the amounts paid as dividends thereon by the trustees in said bankruptcy proceedings; that the amount at which each claim is entitled to be allowed, as hereby adjusted, is correctly set forth in said Schedule of Claims opposite the name of each creditor under column headed, "Amount of Claim allowed exclusive of interest;"

that the amount of interest on each claim to the date hereof is correctly set forth in said Schedule of Claims under column headed "Amount of interest on each claim;" and that the amount of each of the said claims set forth in said schedule, with interest to the date hereof, as hereby determined and adjusted, is correctly set forth opposite the name of each creditor in said schedule under column headed "Amount of claim including interest."

Now, therefore, on motion of James E. Trask and E. H. Morphy, attorneys for said plaintiff, it is hereby determined and ordered that the creditors named in said Schedule of Claims
200 are entitled to recover of said defendant in this action, upon their respective claims, each the respective amounts set opposite their respective names in said schedule of claims under column headed "Amount of Claim, Including Interest," and to have judgment therefor; that said respective claims be and the same are hereby allowed at the respective amounts set opposite the respective names of said creditors in said schedule under column headed "Amount of Claim, Including Interest"; that said plaintiff is entitled to recover of said defendant in this action upon its said claim set forth in said complaint the sum of $2,758.95, and to have judgment therefor; that the said claim of said plaintiff, together with the said claims set forth in said schedule of claims as hereby determined and allowed, and amounting in the aggregate to $146,169.51, are entitled to be paid in full, with interest from the date hereof, if the amount collected by the receiver appointed herein, after the payment of costs and expenses, shall be sufficient for that purpose, or, if said amount shall not be sufficient to pay said claims in full, then that the said claims shall, under the further order of the court, share pro rata in the fund so collected, after payment of the costs and expenses of collecting the same, of this action, and of said receivership.

Let judgment be entered accordingly.

Dated at St. Paul, Minn., April 20th, 1907.

WILLIAM LOUIS KELLY,
Judge of District Court.

Endorsed: 93657. Order for Judgment. Filed. Matt Jensen, Clerk, by G. A. Johnson, Deputy. April 23, 1907, 10 A. M.

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SCHEDULE OF CLAIMS.

Name of claimant.	Nature of claim. Amount when it arose.	Amount of claim allowed exclusive of interest.	Amount of interest on each claim.	Amount of claim, including interest.
John C. Vogler.	Goods sold and delivered to defendant on April 24th, 1905, $240.24.	$190.79	$21.84	$212.63
John C. Dowd and James H. Dowd, copartners as John C. Dowd & Company.	Goods sold and delivered to defend*fend*ant between 1st June, 1905, and 1st August, 1905, $510.63.	$406.21	$48.42	$454.63
Mills & Gibb, a corporation of State of New Jersey.	Goods sold and delivered to defendant between 1st June and 15th June, 1905, $172.25.	$136.92	$17.64	$154.56
The Bilt-Rite Manufacturing Company, a corporation of State of Minnesota.	Goods sold and delivered to defend*and* on and between 8th December, 1904, and 1st January, 1905, $1,050.	$596.62	$97.41	$694.03
M. A. Seed Dry Plate Company, a corporation of Missouri.	Goods sold and delivered to defendant on 22nd June, 1905, $40.63.	$32.32	$4.19	$36.51
John V. Farwell Company, corporation, State of Illinois.	Goods sold and delivered to defendant between 6th March, 1905, and 25th July, 1905, $18,968.89.	$15,089.69	$1,856.75	$16,946.42
The Jennings Bros. *Manufacturing* Mfg. Co., a corporation, State of Connecticut.	Goods sold and delivered to defendant on 10th January, 1905, $63.63.	$50.62	$7.79	$58.41
Frank H. Ewing, E. H. Morphy and John M. Bradford, copartners as Morphy, Ewing & Bradford.	Professional services as attorneys, and disbursements paid for defendant between 1st August and 15th August, 1905, $113.02.	$89.91	$10.41	$100.32
Ezra B. Bailey, Harry Elger and Ludvig Frank, copartners as Bailey, Green & Elger.	Goods sold and delivered to defendant between 4th March, 1905, and 23rd June, 1905, $180.88.	$143.90	$18.22	$162.12
Curtis Leger Fixture Company, corporation State of Illinois.	Goods sold and delivered to defendant on 1st July, 1905, $24.95.	$19.84	$2.41	$22.25
The Eastman Kodak Company, a corporation State of New York.	Goods sold and delivered to defendant on and between 26th May and 31st May, 1905, $28.35.	$22.56	$2.93	$25.49
The Belfast Linen Handkerchief Co., Limited, a corporation of State of New York.	Goods sold and delivered to defendant on 28th June, 1905, $616.35.	$489.95	$61.70	$551.65

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Name of claimant.	Nature of claim. Amount when it arose.	Amount of claim allowed exclusive of interest.	Amount of interest on each claim.	Amount of claim, including interest.
The Amana Society, corporation of State of Iowa.	Goods sold and delivered to defendant on 1st November, 1905, $685.14.	$547.30	$54.70	$600.00
Chicago Novelty Cloak Company, a corporation of State of Illinois.	Goods sold and delivered to defendant on and between 1st January, 1905, and 31st May, 1905, $10,358.02.	$8,400.96	$1,107.61	$9,508.57
M. E. Brooke, doing business under name of Ottoman Mills.	Goods sold and delivered to defendant on 21st February, 1905, $99.79.	$79.38	$12.04	$91.42
E. C. Higgins Company a corporation of State of Massachusetts.	Goods sold and delivered to defendant on and between 12th April, 1904, and 26th July, 1904, $54.67.	$42.85	$8.27	$51.12
The Thread Agency, a corporation of New York.	Goods sold and delivered to defendant on 14th July, 1905, $53.86.	$44.44	$5.41	$49.85
Robert E. Strawbridge, Morris L. Clothier, N. H. Strawbridge and J. H. Clothier, Jr., copartners as Strawbridge & Clothier.	Goods sold and delivered to defendant on 28th April, 1905, $180.93.	$143.93	$19.87	$163.80
Searle Manufacturing Company, a corporation of State of New York.	Goods sold and delivered to defendant on and between 18th February, 1905, and 21st July, 1905, $593.51.	$474.14	$52.94	$527.08
John H. Simons and Charles H. McGill, copartners as Simons & McGill.	Goods sold and delivered to defendant on and between 25th May, 1905, and 24th June, 1905, $11.47.	$9.13	$1.13	$10.26
Max Wiener, Joseph Wiener and Henry Wiener, copartners as Wiener Brothers.	Goods sold and delivered to defendant on 10th July, 1905, $43.97.	$34.99	$4.25	$39.24
The Spool Cotton Company, a corporation of State of New Jersey.	Goods sold and delivered to defendant on 12th Aug., 1905, $44.12.	$35.10	$4.27	$39.37
The Housh Company, corporation of State of Maine.	Goods sold and delivered to defendant on 29th May, 1905, $29.05.	$23.44	$3.12	$26.56
Samuel Oppenheim, I. Hartman and Edward Baruch, copartners as Oppenheim, Baruch & Company.	Goods sold and delivered to defendant on and between 4th April, 1905, and 16th June, 1905, payable 16th July, 1905, $281.98.	$224.31	$28.83	$253.14

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Name of claimant.	Nature of claim. Amount when it arose.	allowed exclusive Amount of claim of interest.	interest Amount of on each claim.	claim, Amount of including interest.
J. E. Doran, J. Bagnall, William M. Miller, J. T. Rush, and J. F. Miller, copartners as Doran, Bagnall & Company.	Goods sold and delivered to defendant on 26th January, 1905, payable 1st July, 1905, $98.29.	$76.80	$9.57	$86.17
The International Art Publishing Company, corporation of State of New York.	Goods sold and delivered to defendant on and between 10th March, 1905, and 24th March, 1905, $45.22.	$35.96	$5.30	$41.26
Multiscope & Film Company, corporation State of Wisconsin.	Goods sold and delivered to defendant on and between 24th June, 1905, and 20th July, 1905, $69.36.	$55.18	$7.16	$62.34
Warren Featherbone Company, corporation State of Illinois.	Goods sold and delivered to defendant on and between 18th May, 1905, and 28th June, 1905, payable 28th August, 1905, $50.25.	$39.98	$4.51	$44.49
Theodore C. Schafuss, doing business as F. L. Schafuss & Company.	Goods sold and delivered to defendant on 11th March, 1905, $42.00.	$33.41	$4.94	$38.35
The Anchor Silver Plate Company, a corporation of State of Minnesota.	Goods sold and delivered to defendant on and between 29th March, 1905, and 14th April, 1905, $73.63.	$58.58	$8.24	$66.82
Richard M. Colgate, Gilbert Colgate, Austin Colgate, Sidney M. Colgate, copartners as Colgate & Company.	Goods sold and delivered to defendant on 6th June, 1905, $48.70.	$38.75	$4.72	$43.47
V. Henry Rothschild Company, a corporation State of New York.	Goods sold and delivered to defendant on and between 15th May, 1905, and 1st August, 1905, payable 4th September, 1905, $772.19.	$614.28	$66.31	$680.59
Colwell Worsted Mills, corporation of State of Rhode Island.	Goods sold and delivered to defendant on and between 1st August, 1905, and 10th August, 1905, payable 14th October, 1905, $1,320.21.	$1,069.12	$109.19	$1,178.31
International Silver Company, corporation of State of New Jersey.	Goods sold and delivered to defendant on and between 13th September, 1904, and 26th April, 1905, $642.28.	$511.72	$71.15	$582.87

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Name of claimant.	Nature of claim. Amount when it arose.	Amount of claim allowed exclusive of interest.	Amount of interest on each claim.	Amount of claim, including interest.
Simon Greenbaum, Albert Greenbaum, copartners as Greenbaum Brothers.	Goods sold and delivered to defendant on 30th June, 1905, payable 30th July, 1905, $91.05.	$72.54	$8.64	$81.18
Isaac Ipp, Abraham Weisberg, Isidor Safferson, copartners as Ipp, Weisberg & Sufferson.	Goods sold and delivered to defendant on 13th March, 1905, payable 10th June, 1905, $210.18.	$167.20	$21.72	$188.92
E. F. Hydeman, Albert Lassner, copartners as Hydeman & Lassner.	Goods sold and delivered to defendant on 13th May, 1905, payable 23rd June, 1905, $399.99.	$318.20	$38.44	$356.64
New Haven Clock Company, corporation State of Connecticut.	Goods sold and delivered to defendant on 18th May, 1905, payable 18th June, 1905, $60.99.	$48.52	$6.02	$54.54
Union Carpet Lining Company, corporation State of Maine.	Goods sold and delivered to defendant on 1st July, 1905, $188.58.	$150.01	$18.85	$168.86
John Mehl & Company, corporation State of New Jersey.	Goods sold and delivered to defendant on and between 9th March and 27th March, 1905, $78.51.	$62.46	$9.10	$71.56
William Meyer, Josef Fenkhart and Frederick Baruch, doing business as William Meyer & Company.	Promissory note in writing, dated Minneapolis, Minn., 22nd July, 1905, for $665.64, made by defendant in favor of creditor, payable at Security Bank, one year.	$535.25	$64.88	$600.13
The Sperry & Alexander Company, corporation State of New York.	Goods sold and delivered to defendant on and between 5th May, 1905, and 5th July, 1905, $79.18.	$62.99	$7.84	$70.83
C. H. Eden Company, corporation State of Rhode Island.	Goods sold and delivered to defendant on 28th February, 1905, payable 30th April, 1905, $238.86.	$190.02	$26.29	$216.31
Thomas B. Fitzpatrick, John R. Ainsley, Hugh Mullen, Joseph G. Porter and James McClandlish, copartners as Brown, Durrel & Company.	Goods sold and delivered to defendant 5th May, 1905, $74.25.	$59.77	$8.22	$67.99

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Name of claimant.	Nature of claim. Amount when it arose.	Amount of claim allowed exclusive of interest.	Amount of interest on each claim.	Amount of claim, including interest.
Abraham W. Cowen, William Cowen, Israel Cowen, Elias D. Cowen, copartners as A. W. Cowen & Brothers.	Goods sold and delivered to defendant on and between 1st April, 1905, and 17th June, 1905, $518.38.	$412.37	$52.72	$465.09
Albany Card & Paper Manufacturing Company, a corporation of State of New York.	Goods sold and delivered to defendant on 26th June, 1905, $30.16.	$24.00	$2.87	$26.87
John G. Elliott, executor of estate of James Elliott, deceased, and the said John G. Elliott, doing business under the firm name and style of James Elliott & Company.	Goods sold and delivered to defendant on and between 17th April, 1905, and 1st August, 1905, payable 14th August, 1905, $311.99.	$248.19	$28.88	$277.07
Emil Dreyfus and Benjamin J. Cohen, copartners as Dreyfus & Cohen.	Goods sold and delivered to defendant on 17th April, 1905, $377.24.	$301.36	$42.49	$343.85
The Allen-Lane Company, corporation State of Minnesota.	Goods sold and delivered to defendant on and between 3rd August, 1905, and 14th August, 1905, $368.38.	$293.04	$34.14	$327.18
The Dennison Manufacturing Company, a corporation of State of New York.	Goods sold and delivered to defendant on and between 24th May, 1905, and 15th August, 1905, $105.72.	$84.10	$9.79	$93.89
David Marx, Samuel Schwezer, copartners as Marx & Company.	Goods sold and delivered to defendant on 12th June, 1905, payable 12th July, 1905, $20.00.	$17.91	$2.01	$19.92
Thomas Dalby Company, corporation State of Massachusetts.	Goods sold and delivered to defendant on 28th February, 1905, payable 28th March, 1905, $51.38.	$51.38	$5.94	$57.32
Mann Summer Clothing Company, corporation State of New York.	Goods sold and delivered to defendant on and between 30th March, 1905, and 22nd July, 1905, $835.26.	$664.46	$80.49	$744.95
W. E. Mayhew, Incorporated, corporation State of Wisconsin.	Goods sold and delivered to defendant 13th June, 1905, $108.40.	$86.35	$10.74	$97.09
Carl B. Pinney.	Goods sold and delivered to defendant on and between 25th July, 1905, and 27th July, 1905, $9.65.	$7.65	.84	$8.49

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Name of claimant.	Nature of claim. Amount when it arose.	Amount of claim allowed exclusive of interest.	Amount of interest on each claim.	Amount of claim, including interest.
Carl Moer, a corporation of State of New York.	Goods sold and delivered to defendant on 21st August, 1905, payable 21st September, 1905, $13.38.	$10.64	$1.12	$11.76
Isidor Rosecschein.	Goods sold and delivered to defendant on and between 13th March, 1905, and 10th April, 1905, payable 27th June, 1905, $370.35.	$294.62	$37.20	$331.82
Simon Lifpitz.	Goods sold and delivered to defendant on 6th June, 1905, $39.60.	$29.50	$4.02	$33.52
William Ewarts & Son, Limited; corporation of Great Britain.	Goods sold and delivered on and between 23rd March, 1905, and 1st May, 1905, payable 31st May, 1905, $2,347.-91.	$1,867.76	$245.32	$2,113.08
Niagara Textile Company, corporation State of New York.	Goods sold and delivered to defendant on 8th June, 1905, payable 8th July, 1905, $281.40.	$224.65	$27.84	$252.49
Max Sundheimer and Ignatz Sundheimer, copartners as Sundheimer Brothers.	Goods sold and delivered to defendant on 24th August, 1905, payable 24th September, 1905, $156.28.	$128.21	$13.50	$141.71
Floridine Manufacturing Company, corporation State of New York.	Goods sold and delivered to defendant 23rd June, 1905, payable 23rd July, 1905, $7.73.	$6.15	.74	$6.89
Burke & James, a corporation State of Illinois.	Goods sold and delivered on and between 7th August, 1905, and 12th September, 1905, payable 15th October, 1905, $15.25.	$10.03	$1.01	$11.04
John F. Degener, William Degener, John A. Degener, Jr., Gustav Von Hasberg, copartners as C. A. Auffmordt & Company, assignee of The Castle Braid Company, a corporation of New York.	Goods sold and delivered by the Castle Braid Company on and between 21st March, 1905, and 4th May, 1905, $307.63. Assigned to C. A. Auffmordt & Company on 4th May, 1905.	$244.72	$33.19	$277.91
Arthur Goldstein.	Goods sold and delivered to defendant 25th July, 1905, payable 29th August, 1905, $87.06.	$69.25	$7.84	$77.06

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Name of claimant.	Nature of claim. Amount when it arose.	Amount of claim allowed exclusive of interest.	Amount of interest on each claim.	Amount of claim, including interest.
James Goldsmith, Jr., Meyer Harzberg, copartners as Goldsmith & Harzberg.	Goods sold and delivered to defendant 23rd January, 1905, $57.00.	$45.34	$7.18	$52.52
Duff & Benton, a corporation of State of New York.	Goods sold and delivered to defendant on 21st March, 1905, payable 30th April, 1905, $406.91.	$323.70	$44.72	$368.42
George S. Holden, Henry L. Holden, Mary A. Holden, Charles E. Fuller, copartners as Holden & Fuller.	Goods sold and delivered to defendant on 15th August, 1904, payable 25th October, 1904, $128.93.	$102.56	$18.21	$120.77
Frederick A. Scheck, Eugene Goodman, copartners as Scheck & Goodman.	Goods sold and delivered on and between 12th April, 1905, and 8th May, 1905, $216.29.	$172.56	$25.00	$197.56
J. P. Logan, Charles P. Logan, copartners as J. P. Logan & Sons.	Goods sold and delivered to defendant on 16th April, 1904, payable 16th May, 1904, $301.57.	$239.91	$50.47	$290.38
Raphael Tuck & Sons Company, a corporation of State of New York.	Goods sold and delivered to defendant 4th March, 1905, $72.50.	$57.67	$8.24	$65.91
William Strauss.	Goods sold and delivered to defendant 13th July, 1905, payable 13th August, 1905, $30.19.	$24.02	$2.80	$26.82
Raudnitz & Pollitz, copartners.	Goods sold and delivered to defendant on and between 9th June, 1905, and 17th June, 1905, $28.80.	$22.91	$2.92	$25.83
Moritz Doob, doing business as M. Doob Sons & Company.	Goods sold and delivered to defendant on 20th June, 1905, $1,102.92.	$877.37	$108.11	$985.48
Kraus & Clauberg Company, corporation State of New York.	Goods sold and delivered to defendant on 24th June, 1905, $146.50, payable 24th July, 1905.	$116.54	$14.06	$130.60
Thomas A. O'Callaghan, John H. Fedden, copartners as O'Callaghan & Fedden.	Goods sold and delivered to defendant on 10th October, 1905, $269.15.	$214.11	$22.43	$236.54
Levi Simson, Louis Simson and Louis M. Simson, copartners as Levi Simson & Company.	Goods sold and delivered to defendant on and between 12th April, 1905, and 20th June, 1905, $485.77.	$386.44	$50.37	$436.81
National Papetrie Company, corporation State of Massachusetts.	Goods sold and delivered to defendant on 13th May, 1905, $14.21.	$11.38	$1.51	$12.89

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Name of claimant.	Nature of claim. Amount when it arose.	Amount of claim allowed exclusive of interest.	Amount of interest on each claim.	Amount of claim, including interest.
Abe Feldman, Rachmiell Suton and Israel Black, copartners as A. Feldman & Company.	Goods sold and delivered to defendant on and between 22nd day of March, 1905, and 25th March, 1905, $251.20.	$199.83	$29.19	$229.02
Gilbert Manufacturing Company, corporation State of New York.	Goods sold and delivered to defendant on 30th March, 1905, $141.31.	$112.41	$13.86	$126.27
Valyu Garment Company, corporation State of Wisconsin.	Goods sold and delivered to defendant on and between 18th March, 1904, and 19th July, 1904, $1,617.78.	$1,286.99	$245.46	$1,532.45
Nathan Blumenthal, Henry Erdman and Henry Schottenfels, copartners as Blumenthal, Erdman & Company	Goods sold and delivered to defendant 7th March, 1905, $3,520.06, payable 24th May, 1905.	$2,800.30	$372.72	$3,173.02
Kennedy, Suffel & Andrews, corporation State of Wisconsin.	Goods sold and delivered to defendant on and between 1st September, 1905, and 19th September, 1905, $222.19.	$176.75	$19.26	$196.01
Albert M. Lindeke, Albert W. Lindeke and Reuben Warner, copartners as Lindeke, Warner & Sons.	Goods sold and delivered to defendant on and between 27th February, 1905, and 14th July, 1905, $22,952.11, payable 15th August, 1905.	$16,864.27	$2,032.49	$18,896.76
Frank W. Pinska.	Creditor leased certain departments in store of defendant between 18th September, 1905, and 27th September, 1905, defendant collected from departments of creditor, $797.65.	$473.54	$81.51	$555.05
Z. Pope Vose.	Creditor leased certain departments in store of defendant and between 11th September, 1905, and 27th September, 1905, defendant collected from departments of creditor, $665.26.	$301.42	$52.03	$353.45

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Name of claimant.	Nature of claim. Amount when it arose.	Amount of claim allowed exclusive of interest.	Amount of interest on each claim.	Amount of claim, including interest.
Anton Knoblauch and Frank Knoblauch, copartners as A. Knoblauch & Sons.	Creditors leased certain departments in store of defendant and between 18th September and 27th September, 1905, defendant collected from departments of creditors, $1,572.73, and the further sum of $1,865.00.	$1,716.74	$194.98	$1,911.72
Edward M. Kahn and Jacob Wertheimer, copartners as Kahn & Wertheimer.	Goods sold and delivered to defendant between 1st March, 1905, and 1st April, 1905, $111.50.	$88.70	$12.78	$101.48
Security Bank of Minnesota, corporation of State of Minnesota.	Promissory note dated 19th August, 1905, made by defendants to creditor for $10,000. Promissory note dated 11th September, 1905, made by defendant to creditor for $5,000.	$9,862.89	$208.74	$10,071.03
Charles Kohlman & Company, corporation of State of New York.	Promissory note made by defendants to themselves dated 21st July, 1904, for $5,000, payable 31st December, 1904. Endorsed in blank and delivered to claimant.	$4,606.93	$106.69	$4,712.62
The Journal Printing Company, corporation State of Minnesota.	Between 1st December, 1902, and 27th December, 1905, claimant furnished the defendant certain advertising in the Minneapolis Journal reasonably worth $32,090.35.	$11,856.84	$250.99	$12,107.83
William Bene	Goods sold and delivered to defendant between 1st January, 1904, and 1st July, 1905, $22.88.	$18.20	$2.22	$20.42
Liberty Soap Company, corporation of State of Illinois.	Goods sold and delivered to defendant on and between 1st May, 1905, and 1st August, 1905, $42.50.	$33.81	$4.04	$37.85
Edwin Lowe, doing business as Edwin Lowe & Company.	Goods sold and delivered to defendant on and between 1st January, 1904, and 1st July, 1905, $185.96.	$162.33	$20.38	$182.71

210 Name of claimant.	Nature of claim. Amount when it arose.	Amount of claim allowed exclusive of interest.	Amount of interest on each claim.	Amount of claim, including interest.
Fessenden & Company, corporation of State of Massachusetts.	Goods sold and delivered to defendant on 6th October, 1904, $19.20.	$16.27	.34	$16.61
Morris S. Mayper, Mayer Mayper, Morris S. Mayper, Jr., Isador Mayper and Samuel Mayper, doing business as Liberty Garter Works.	Goods sold and delivered to defendant on and between 28th July, 1905, and 7th September, 1905, $91.92.	$74.45	$8.21	$82.66
C. Cramer Dry Plate Company, corporation State of Missouri.	Goods sold and delivered to defendant on and between 1st January, 1905, and 1st August, 1905, $61.41.	$48.24	$5.78	$54.02
C. J. Veith, Jacob Brandt, copartners as Veith & Brandt.	Promissory note dated 10th August, 1905, made by defendant to creditor for $241.10, payable thirty days after date.	$191.80	$22.49	$214.29
Fritz Nachod, Max Hessberg, Percival Kuhne, copartners as Knauth, Nachod & Kuhne, as assignees of Alfred Alderice.	Goods sold and delivered to defendant on and between 1st August, 1905, and 10th August, 1905, by one Alfred Alderdice, $1,592.05. Said claim sold and assigned by Alfred A. Alderdice to creditors.	$1,288.56	$150.60	$1,439.16
W. Blackinton and S. Blackinton, copartners as W. & S. Blackinton.	Goods sold and delivered to defendant on and between 1st January, 1904, and 1st July, 1905, $369.09.	$283.61	$36.24	$319.85
Minnesota Tribune Company, corporation State of Minnesota.	On and between 1st July, 1904, and 31st May, 1905, Minnesota Tribune Company furnished to defendant advertising in its newspaper reasonably worth and of agreed price of $15,184.21. Minnesota Tribune Company on and between 1st July, 1905, and 27th September, 1905, furnished advertising to defendant of the agreed price of $3,976.47. On and between 1st March, 1904, and 23rd September, 1905,	$15,548.12	$1,842.84	$17,390.96

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Name of claimant.	Nature of claim. Amount when it arose.	Amount of claim allowed exclusive of interest.	Amount of interest on each claim.	Amount of claim, including interest.
	the Times Newspaper Company furnished advertising to defendant at the agreed price of $10,816.46, said claim being assigned to the Minnesota Tribune Company.			
Lord & Taylor, corporation State of New York.	Goods sold and delivered on and between 24th February, 1905, and 3rd June, 1905, $2,033.79.	$1,610.74	$212.34	$1,822.78
Stephen Sanford and John Sanford, copartners as Stephen Sanford & Sons.	Goods sold and delivered to defendant on and between 27th April, 1904, and 11th November, 1904, $1,903.15. Payable 1st November, 1904.	$1,514.23	$266.24	$1,780.47
The Carter-Crume Company, Limited, corporation of Province of Ontario, Canada.	Goods sold and delivered to defendant 8th May, 1905, $55.53.	$44.18	$8.17	$52.35
The Beverly Company, corporation State of Wisconsin.	Goods sold and delivered to defendant on 5th April, 1905, $13.25.	$12.14	$1.70	$13.84
Rutland Wrapper & Skirt Company, corporation State of Vermont.	Goods sold and delivered to defendant on and between 10th April, 1905, and 5th May, 1905, $1,308.64.	$1,041.03	$142.93	$1,183.96
Jonas Brooke & Brothers, Limited, corporation of Great Britain	Goods sold and delivered to defendant on and between 27th and 30th June, 1905, $68.79.	$54.72	$6.82	$61.54
Kraut & Finver Brothers, corporation State of New York.	Goods sold and delivered to defendant on 12th March, 1905, $82.75.	$67.83	$9.78	$75.61
Leon Mann, doing business as The Mann Summer Clothing Company.	Goods sold and delivered to defendant on and between 2nd March, 1905, and 22nd July, 1905, $820.50.	$649.70	$18.97	$668.67
Chicago Folding Box Company, a corporation of State of Illinois.	Goods sold and delivered to defendant on 20th July, 1905, $127.50.	$101.43	$9.29	$110.72
The Rotograph Company, corporation State of New York.	Goods sold and delivered to defendant on and between 4th April, 1905, and 26th June, 1905, $92.12.	$73.10	$9.24	$82.34

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Name of claimant.	Nature of claim. Amount when it arose.	Amount of claim allowed exclusive of interest.	Amount of interest on each claim.	Amount of claim, including interest.
Henry Schadewald, doing business as Schadewald Mills.	Goods sold and delivered to defendant on and between 21st February, 1905, and 14th March, 1905, $116.40.	$92.06	$12.57	$104.63
Edward H. Titus.	Promissory note dated 28th February, 1905, made by defendant in favor of creditor for $5,000, payable one year from date.	$3,941.71	$601.32	$4,543.03
Hyman Callert and Charles Strauss, copartners as H. Callert Manufacturing Company.	Goods sold and delivered to defendant on and between 31st March, 1905, and 24th June, 1905, $43.00.	$34.08	$3.86	$37.94
Pabst Chemical Company, corporation State of Illinois.	Goods sold and delivered to defendant on 1st October, 1905, $3.50.	$2.78	.26	$3.04
Manitowoc Aluminum Novelty Company, corporation State of Wisconsin.	Goods sold and delivered to defendant on and between 26th July, 1905, and 30th August, 1905, $9.63.	$7.66	$0.85	$8.51
Stone & Company, Incorporated, corporation State of Illinois.	Goods sold and delivered on and between 12th April, 1905, and 23rd June, 1905, $61.50.	$48.80	$5.93	$54.73
Max Brock, doing business as Brock & Company.	Goods sold and delivered to defendant on and between 9th August, 1905, and 13th September, 1905, $53.90.	$42.88	$3.94	$46.82
F. M. Owens, Mathew J. Owens and S. Hillson, copartners as The Owen Bros.-Hillson Company.	Goods sold and delivered to defendant on 16th August, 1905, $10.00.	$7.95	$0.91	$8.86
The American Credit Indemnity Company, corporation of State of New York, assignee of William Fischman.	Goods sold and delivered by William Fischman to defendant on and between 1st August, 1905, and 13th September, 1905, $134.00. On 5th July, 1906, William Fischman sold said claim to creditor.	$106.59	$10.30	$116.89
Emil Strouse and Louis Eisendrath, copartners as Strouse, Eisendrath & Company.	Goods sold and delivered to defendant on and between 21st February, 1905, and 8th July, 1905, $3,495.68.	$4,371.81	$487.58	$4,859.39

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Name of claimant.	Nature of claim. Amount when it arose.	Amount of claim allowed exclusive of interest.	Amount of interest on each claim.	Amount of claim, including interest.
Macey Hook & Eye Company, corporation State of Michigtn.	Goods sold and delivered to defendant on and between 20th May, 1905, and 31st May, 1905, $33.65.	$26.77	$3.46	$30.23
Rudolph Edshil, Julius Lowenthal, J. M. Keaiss, E. E. Dieckerhoff, copartners as Dieckerhoff, Raffloer & Company.	Goods sold and delivered to defendant on and between 27th February, 1905, and 15th August, 1905, $937.53.	$743.03	$86.69	$829.72
Adolph Abrahams and Jacob L. Heiden, copartners as Ad. Abrahams & Company.	Goods sold and delivered to defendant 7th April, 1905, $75.59.	$60.13	$8.57	$68.70
Seneca Camera Manufacturing Company, corporation State of New York.	Goods sold and delivered to defendant on and between 24th April, 1905, and 11th July, 1905, $94.21.	$74.95	$9.23	$84.18
Enos F. Jones Chemical Company, corporation State of New Jersey.	Goods sold and delivered to defendant on 29th March, 1905, $29.11.	$23.16	$3.34	$26.50
Oscar M. Arnold and Isaac Schiff, copartners as Arnold, Schiff & Company.	Goods sold and delivered to defendant on 7th April, 1905, $162.36.	$129.90	$18.56	$148.46
Nonotuck Silk Company, corporation State of Massachusetts.	Goods sold and delivered to defendant on and between 21st November, 1904, and 20th August, 1905, $613.90.	$468.53	$56.18	$524.71
Hugo Boessneck, Herman Broesel, Herman Wedegerton, copartners as Boessneck, Broesel & Company.	Goods sold and delivered to defendant on and between 7th September, 1905, and 16th September, 1905, $491.50.	$391.00	$42.96	$433.96
Samuel Eiseman, Samuel L. Ferber, Arthur L. Selig, copartners as Samuel Eiseman & Company.	Goods sold and delivered to defendant on and between 28th February, 1903, and 11th May, 1905, $5,378.49.	$4,278.68	$582.01	$4,860.69
Johnson, Hayward & Piper, corporation State of New York.	Goods sold and delivered to defendant on and between 28th June, 1905, and 31st July, 1905, $40.25.	$32.02	$3.80	$35.82
Leopold Stern, August Goldsmith and Estate of Isidore Stern, copartners as Stern Brothers & Company.	Goods sold and delivered to defendant on and between 14th April, 1905, and 24th June, 1905, $122.70.	$97.51	$12.29	$109.80

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Name of claimant.	Nature of claim. Amount when it arose.	Amount of claim allowed exclusive of interest.	Amount of interest on each claim.	Amount of claim, including interest.
Alexander Crow, Jr., doing business as Caledonia Carpet Mills.	Goods sold and delivered to defendant on and between 7th September, 1904, and 15th September, 1904, $491.50.	$390.91	$72.37	$463.28
The John C. Uhrlaub Oriental Rug Company, corporation State of New York.	Goods sold and delivered to defendant on and between 30th March, 1904, and 28th November, 1904, $200.	$139.10	$27.08	$186.18
The Anthony & Scoville Company, corporation of New York.	Goods sold and delivered to defendant on 11th May, 1905, $18.63.	$14.82	$1.94	$16.76
George Frost Company, corporation State of Massachusetts.	Goods sold and delivered to defendant 28th July, 1905, $5.87.	$4.68	$0.50	$5.18
The Pairpoint Corporation, corporation State of Massachusetts.	Goods sold and delivered on 22nd December, 1905, $93.00.	$73.98	$4.83	$78.81
Morris Strauss and Max Yankauer, copartners as Adolph Strauss & Company, Assignee of the Bretzfield Manufacturing Company Corporation of State of New York.	Goods sold and delivered to defendant 5th September, 1905, $7.00. Claim assigned by The Bretzfield Manufacturing Company to claimant 1st January, 1907.	$5.75	$0.55	$6.30
The C. E. Conover Company, corporation State of New York, as assignee of The Omo Manufacturing Company, corporation of State of Connecticut.	Goods sold and delivered to defendant by the Omo Manufacturing Company 1st July, 1905, $99.47. Claim of The Omo Manufacturing Company assigned to C. E. Conover Company 15th January, 1907.	$79.08	$9.90	$88.98
W. H. Morse as assignee of Frank V. Burton, Robert L. Burton, John H. Burton, Frank L. St. John, copartners as Burton Brothers & Company.	Goods sold and delivered to defendant by Burton Brothers & Company on and between 31st January, 1905, and 9th June, 1905, $1,597.38. Said claim assigned by Burton Brothers & Company to W. H. Morse 1st January, 1907.	$1,270.71	$165.36	$1,436.07

15 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOAN COMPANY, a Corporation, Defendant.

Judgment and Decree Adjudging and Allowing Claims of Plaintiff and Creditors.

The above entitled action duly came on to be heard before said Court at a general term thereof held at the Court House, in the city of St. Paul, in said Ramsey county, on the 11th day of April, 1907, for the purpose of examining and adjusting the claims filed and presented herein by the creditors of said defendant and to determine and adjudge the respective amounts at which the respective *amounts at which the respective* claims so filed and presented are entitled to be allowed, and the amounts which said creditors are entitled to recover herein upon their respective claims. James E. Trask and E. H. Morphy appeared for said plaintiff, prosecuting said action on its own behalf and on behalf of all other creditors who have come into said action and filed and presented their claims, and Walter Chapin appeared for Loeb & Schoenfeld and asked for a continuance of said action as to the claim of said Loeb and Schoenfeld, and the Court, with consent of all parties, continued the matter of the hearing of said claim of Loeb and Schoenfeld to the May term of said Court.

And it appearing that this action was brought by said plaintiff on its own behalf and on behalf of all other creditors of said defendant who should duly present their claims and become parties to this action to sequestrate the property, if any, acquired by said defendant subsequent to the commencement of this action, and the stock and things in action of said defendant, and to appoint a receiver therefor and of the rights or causes of action to recover upon and enforce for the benefit of said creditors the individual liability of all the stockholders of said defendant by means of a ratable assessment ordered and adjudged by said Court upon all the capital stock of said defendant and against all parties liable as stockholders; and to determine and adjudge the claim of said plaintiff herein, and the claims of all the other creditors of said defendant, and the amount of each claim; and it appearing from the evidence
216 that at the time of the commencement of this action the property of said defendant was being administered in bankruptcy proceedings then pending in the United States District Court for the District of Minnesota, which proceedings have been closed and the final dividend paid, and that the total amount paid in dividends in said bankruptcy proceedings was less than 22 per cent of the face of said claims.

And it appearing that the summons and complaint in this action

were duly and personally served on said defendant corporation on the 28th day of May, 1906, that thereafter said defendant duly appeared in said action, and that said Court duly acquired jurisdiction over the parties to and the subject matter of this action; and that thereafter such further proceedings were duly had in said action that on the 25th day of June, 1906, said Court duly made and entered its order and decree herein appointing Charles E. Hamilton as receiver, with the usual powers and directions, of all the property of said defendant, if any, acquired subsequent to the commencement of this action, and of the stock and rights or causes of action to enforce payment of the said individual liability of the stockholders of said defendant, and that said receiver thereupon immediately qualified and entered upon the discharge of his duties as such receiver; and that thereafter and on the 4th day of September, 1906, said Court, upon the petition of said receiver, and upon due notice and hearing, made its order herein assessing the capital stock of said defendant and requiring each stockholder to pay to said receiver the sum of $100.00 for and on account of each and every share of said stock owned by each stockholder within thirty days after the date of said order.

And it appearing that on the 28th day of June, 1906, said Court duly made and entered an order herein requiring creditors to present and prove their claims by filing with the Clerk of said Court their verified complaints setting forth their respective claims within the time provided in said order, or be barred from sharing in the benefits of this action, and that all claims so filed and proved, unless objected to as provided in said order, should stand admitted and allowed without further proof; and that due notice of said order requiring creditors so to file and present their claims has been given as required by said order, and that the time limited by order of Court herein for filing claims ended and expired on the 16th day of February, 1907.

And it appearing that said plaintiff sets forth and alleges in its complaint herein, among other things, that between the 8th
217 day of May and the 15th day of July, 1905, said plaintiff, at the defendant's special instance and request, sold and delivered to said defendant goods and merchandise worth and of the reasonable value of $3,065.50, which said sum said defendant promised and agreed to pay therefor, and that, although long since due, said sum has not been paid, nor any part thereof except the sum of $306.55 paid by the trustees appointed in the matter of the bankruptcy of said defendant corporation, and in the prayer for relief, among other things, demands judgment against said defendant for the sum of $2,758.95 and interest thereon; and it further appearing that on the 25th day of June, 1906, plaintiff's attorneys duly made and caused to be filed their affidavit that no answer or demurrer to said complaint or copy of either has ever been served on plaintiff's attorneys, or either of them, and that plaintiff's said claim has not been objected to, but stands admitted, and that no answer or objection has been made to any of said claims except the claim of Loeb and Schoenfeld.

And the Court having made and filed its findings and order for judgment herein, finding and determining that the persons, co-partnerships and corporations whose names are set forth in the "Schedule of Claims," hereto attached and made a part of this judgment are creditors of said defendants; that, with the exception of said Loeb & Schoenfeld, they are the only creditors and all the creditors who have joined in said action and filed their claims herein; that the amount for which each of said claims *were* filed, when each of said claims arose, and the nature thereof is correctly set forth in said Schedule of Claims under column headed "Nature of Claim. Amount. When It Arose": that each of said creditors is entitled to be allowed herein the amount for which his claim was filed, except in those cases where creditors have, since the filing of their claims, been paid the final dividend thereon by the trustees in said bankruptcy proceedings, and in those cases said creditors are entitled to be allowed the amounts for which their respective claims were filed, less the amount paid as dividends thereon by the trustees in said bankruptcy proceedings; that the amount at which each claim is entitled to be allowed, as hereby adjusted, is correctly set forth in said Schedule of Claims opposite the name of each creditor under column headed "Amount of Claim Allowed, Exclusive of Interest": that the amount of interest on each claim to the date hereof is correctly set forth in said Schedule of Claims under column headed "Amount of Interest on Each Claim";
218 and that the amount of each of the said claims set forth in said schedule, with interest to the date hereof, as determined by said findings and order for judgment is correctly set forth opposite the name of each creditor in said schedule under column headed "Amount of Claim, Including Interest"; and ordering and directing judgment as follows:

Now, therefore, on motion of James E. Trask and E. H. Morphy, attorneys for said plaintiff, it is hereby adjudged and decreed that the creditors named in said Schedule of Claims recover of said defendant in this action, upon their said respective claims, each the respective amounts set opposite their respective names in said Schedule of Claims under column headed "Amount of Claim, Including Interest"; that said respective claims be and the same are hereby allowed at the respective amounts set opposite the respective names of said creditors in said schedule under column headed "Amount of Claim, Including Interest"; that said plaintiff recover of said defendant in this action upon its claim set forth in said complaint the sum of $2,758.95; that said judgment in favor of said plaintiff upon its said claim, together with the said judgments in favor of said creditors, respectively, upon their said several claims set forth in said Schedule of Claims, amounting in the aggregate to $146,169.51, are entitled to be paid in full, with interest from the date hereof, out of the amounts collected by said receiver herein from the assets, if any, of said defendant and from its stockholders upon their superadded liability, if the amounts so collected, after payment of the costs and expenses of collecting and distributing such fund, shall be sufficient for the purpose; or, if said amounts

shall not be sufficient to pay such claims in full, then that said claims shall, under the further order of the Court, share pro rata in the fund and amounts so collected, after payment of the costs and expenses of collecting the same, the costs and expenses of this action and of this receivership.

Dated at St. Paul, Minnesota, April 23rd, 1907.

MATT JENSEN, *Clerk,*
By G. A. JOHNSON, *Deputy.*

The above form of judgment is hereby approved.

KELLY,
Judge of District Court.

Endorsed: Filed April 23, 1907, at 10:50 A. M. Matt Jensen, Clerk, by G. A. Johnson, Deputy. Recorded in Book 19 of Decrees at page 585.

219 *Schedule of Claims.*

(Same as Schedule of Claims attached to order for Judgment and allowing claims, p. 86 of original, p. 201 of transcript, p. — of printed record.)

220 *Stipulation Waiving Printing of Certain Intervening Complaints in Plaintiff's Exhibit 6.*

United States District Court, Southern District of New York.

CHARLES E. HAMILTON, as Receiver of Evans, Johnson, Sloane Company, Plaintiff,
against
ARTHUR L. SELIG, Defendant.

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that the exemplified record of the proceedings in the District Court of Ramsey County, Minn., plaintiff's exhibit 6, contains verified intervening complaints filed by alleged creditors and that with respect to the names of the alleged creditors, the nature of the claim set up and when it arose, and the amount thereof, the said intervening complaints which are not printed in the record on appeal correspond to the schedule of claims in the order for judgment and the judgment both filed April 23rd, 1907; and it is further stipulated:

That said intervening complaints shall not be printed in the record on appeal except the intervening complaints filed by—

E. G. Higgins Company, a corporation of the State of Massachusetts, p. 148 of record.

George S. Holden, Henry L. Holden, Mary A. Holden,
221 Charles E. Fuller, co-partners as Holden & Fuller, p. 297 of record.

J. P. Logan, Charles P. Logan, co-partners as J. P. Logan & Sons, p. 300 of record.

Valyu Garment Company, a corporation of the State of Wisconsin, p. 146 of record.

Frank W. Pinska, p. 191 of record.

Charles Kohlman & Company, a corporation of the State of New York, p. 314 of record.

The Journal Printing Company, a corporation of the State of Minnesota, p. 316 of record.

William Bens, p. 128 of record.

Edwin Lowe, doing business as Edwin Lowe & Company, p. 238 of record.

W. Blackington and S. Blackington, co-partners as W. & S. Blackington, p. 243 of record.

Minnesota Tribune Company, a corporation of the State of Minnesota, p. 318 of record.

Stephen Sanford, p. 250 of record.

Alexander Crow, Jr., doing business as Caledonia Carpet Mills, p. 330 of record.

The John C. Urlaub Oriental Rug Company, a corporation of the State of New York, p. 331 of record.

Loeb & Schoenfeld Company, a corporation, p. 349 of record.

together with the answer of the receiver to such complaint, p. 352, the reply p. 361, the findings p. 362, the order on motion to amend findings as to amount due intervenor, p. 365, the judgment allowing the claim of Loeb & Schoenfeld Company, p. 367, and it is further

Stipulated that the intervening complaints and papers of the foregoing named intervenors shall be printed in the record on
222 appeal, and it is further

Stipulated that each of the respective intervening complaints was filed upon the date set opposite the name of each of the intervenors, as follows:

Mills & Gibb	July	2,	1906.
Dowd John C	"	3,	"
Vogler John G	"	"	"
Bilt Rite Mfg. Co	"	14,	"
M. A. Seed Dry Plate Co	"	"	"
Jennings Bros. Mfg. Co., Inc	"	20,	"
Bailey, Green & Elger	"	25,	"
Curtiss Leger Fixture Co	"	"	"
Eastman Kodak Co	"	"	"
Belfast Linen Handkerchief Co., Ltd	"	26,	"
Morphy, Ewing & Bradford	"	"	"
Amana Society	"	31,	"
Chicago Novelty Cloak Co	"	"	"
E. G. Higgins Co	"	"	"
Searle Mfg. Co	August	2,	"
Thread Agency	"	"	"
Strawbridge & Clothier	"	8,	"

Simons & McGill	"	6,	"
Housh Co	"	21,	"
Anchor Silver Plate Co	"	30,	"
Colgate & Co	"	"	"
Schafuss Theodore C	"	"	"
C. H. Eden Co	"	31,	"
Doran Bagnall & Company	"	"	"
Greenbaum Brothers	"	"	"
Hydeman & Lassner	"	"	"
International Art Publishing Co	"	"	"
" Silver Co	"	"	"
Ipp, Weisberg & Safferson	"	"	"
John Mehl Co	"	"	"
Multiscope & Film Co	"	"	"
Oppenheim Baruch & Company	"	"	"
V. Henry Rothchild	"	"	"
Sperry & Alexander Co	"	"	"
The New Haven Clock Co	"	"	"
The Spool Cotton Company	"	"	"
Warren Featherbone Company	"	"	"
Wiener Bros	"	"	"
William Meyer & Co	"	"	"
Albany Card & Paper Mfg. Co	Sept.	13,	"
Allen-Lane Co	"	"	"
A. W. Cohen & Brothers	"	"	"
Brown, Durrell & Co	"	"	"
Dennison Mfg. Co	"	"	"
223 Dreyfus & Cohen	Sept.	13,	1906
James Elliott & Co	"	"	"
A. Feldman & Co	Oct.	3,	"
Arthur Goldstein	"	"	"
Aufmordt & Co	"	"	"
Blumenthal, Erdman & Co	"	"	"
Burke & James	"	"	"
Carl B. Pinney	"	"	"
Carl Moer	"	"	"
Duff & Benton	"	"	"
Floridine Mfg. Co	"	"	"
Gilbert Mfg. Co	"	"	"
Goldsmith & Harzberg	"	"	"
Holden & Fuller	"	"	"
Isidor Rosenschein	"	"	"
J. P. Logan & Son	"	"	"
Kraus & Glauberg Co	"	"	"
Levi, Simpson & Company	"	"	"
Mann Summer Clothing Co	"	"	"
W. E. Mayhew, Inc	"	"	"
Marx & Company	"	"	"
M. Doub Sons & Co	"	"	"
National Papeterie Co	"	"	"
Niagara Textile Co	"	"	"

O'Callaghan & Fedden	"	"	"
Raphael Tuck & Sons Co	"	"	"
Raudnitz & Pollitz	"	"	"
Scheck & Goodman	"	"	"
Simon Lifpitz	"	"	"
Sondheimer Bros	"	"	"
Thomas Dalby	"	"	"
Valyu Garment Co	"	"	"
William Ewart & Son	"	"	"
William Strauss	"	"	"
Kennedy, Suffel & Andrews	"	20,	"
Lindeke, Warner & Sons	Dec.	17,	"
Anton Knoblauch and Frank Knoblauch partners as Knoblauch & Sons	"	22,	"
Frank W. Pinska	"	"	"
Z. Pope Vose	"	"	"
Charles Kohlmann	"	23,	"
Kahn & Wertheimer	"	26,	"
Security Bank of Minnesota	"	27,	"
Journal Printing Co	"	28,	"
C. J. Veith and Jacob Brandt, partners as Veith & Brandt	"	29,	"
Edwin Lowe	"	"	"
Fessenden & Co	"	"	"
Fritz Nachod, Max Hessberg, Percival Kuhne, partners as Knauth, Nachod & Kuhne	"	"	"
G. Cramer Dry Plate Co	"	"	"
Morris S. Mayper, Mayer Mayper, Morris S. Mayfer, Isador Mayfer and Samuel Mayfer, partners under the firm and style of Liberty Garter Works	"	"	"
Liberty Soap Co	"	"	"
W. Blackington & S. Blackington	"	"	"
William Bens	"	"	"
Minnesota Tribune Co	"	31,	"
224 Cartor-Crume Co., Lim	Jan.	15,	1907.
Chicago Folding Box Co	"	15,	"
Edward H. Titus	"	"	"
Henry Sebadewald	"	"	"
H. Gallert Mfg. Co	"	"	"
Jonas Brook & Brothers, Ltd	"	"	"
Kraut & Finver Bros	"	"	"
Leon Mann	"	"	"
Lord & Taylor	"	"	"
Manitowoc Aluminum Novelty Co	"	"	"
Pabst Chemical Co	"	"	"
Rotograph Co	"	"	"
Rutland Wrapper & Skirt Co	"	"	"
Stephen Sanford & Sons	"	"	"
Stone & Company	"	"	"
The Beverly Co	"	"	"

Union Carpet Lining Co.	"	"	"
Adolphus Abrahams & Co.	"	17,	"
American Credit Indemnity Co.	"	"	"
Arnold Schiff Co.	"	"	"
A. W. Cowen & Bros.	"	"	"
Deckerhoff Raffloer & Co.	"	"	"
Enos F. Jones Chemical Co.	"	"	"
Macey Hook & Eye Co.	"	"	"
Max Brock	"	"	"
M. E. Brooke	"	"	"
Owens Bros. Hillson Co.	"	"	"
Seneca Camera Co.	"	"	"
Strouss Eisendrath & Co.	"	"	"
Alexander Crow, Jr.	"	19,	"
Boessneck, Brossel & Co.	"	"	"
Colwell Worsted Mills	"	"	"
Johnson, Hayward & Peper	"	"	"
John V. Farwell	"	"	"
Nonotuck Silk Co.	"	"	"
Samuel Eisemon & Co.	"	"	"
Stern Bros.	"	"	"
Adolph Strauss & Co., as assignee of the Bretzfield Mfg. Co.	Feb.	15,	1907.
Anthony Scoville Co.	"	"	"
C. E. Conover Co. as assignee of the Omo Mfg. Co.	"	"	"
George Frost Co.	"	"	"
John C. Urlaub Oriental Rug Co.	"	"	"
Pairpoint Corporation	"	"	"
W. H. Morse as assignee of Burton Bros. & Co.	"	"	"
Loeb Schoenfeld Co.—judgment filed	"	13,	"

and it is further

Stipulated that this stipulation be printed in the record on appeal immediately following the judgment allowing the claims
225 of the intervening creditors, filed April 23rd, 1907, on page 100 of the original certified record.

Dated, New York, July 15th, 1912.

JOHN J. CLARK,
Attorney for Charles E. Hamilton, Defendant in Error.
JAMES, SCHELL & ELKUS,
Attorneys for Arthur L. Selig, Plaintiff in Error.

226 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

Complaint of Valyu Garment Company, in Intervention.

The Valyu Garment Company, a creditor of the above named defendant, Evans, Johnson, Sloane Company, files its com-
227 plaint in intervention for the purpose of presenting its claim against the said defendant corporation, as hereinbefore set forth, and for the purpose of becoming a party to this action under and pursuant to the order of this Court made herein on the 28th day of June, 1906, in that behalf, and said creditor, Valyu Garment Company, represents to this Court and alleges:

1. That the defendant is now and at all times hereinafter mentioned it was a corporation duly organized, created and existing under and by virtue of the laws of the State of Minnesota.

2. That said creditor, Valyu Garment Company, is now and at all times hereinafter mentioned it was a corporation duly organized, created and existing under and by virtue of the laws of the State of Wisconsin.

That on and between the 18th day of March, 1904, and the 19th day of July, 1904, at the special instance and request of said defendant, Evans, Johnson, Sloane Company, the said Valyu Garment Company, sold and delivered to said defendant goods, wares and merchandise then worth and of the reasonable value of one thousand six hundred seventeen and 78-100 dollars, which the said defendant agreed to pay therefor within a reasonable time thereafter, which time has long since elapsed; that, though often demanded, said defendant has not paid the same, or any part thereof, except the sum of one hundred sixty-one and 78-100 dollars.

Wherefore, the Valyu Garment Company prays judgment of this Court herein that its claim against the said defendant be allowed in this action for the sum of one thousand four hundred fifty-six dollars, with interest thereon at the rate of six per cent per annum from the 19th day of July, 1904; that said Valyu Garment Company may become a party to this action and have judgment against the said defendant in the said sum of one thousand four hundred fifty-six dollars, with interest thereon as aforesaid, and have all that relief in this action as demanded by the complaint, the same as if the said creditor had been a party thereto, and prays such further and other relief in the premises as to this Court shall seem meet.

JAMES E. TRASK,
Attorney for Valyu Garment Company.

STATE OF MINNESOTA,
County of Ramsey, ss:

James E. Trask, being first duly sworn, deposes and says that he is the attorney for the plaintiff corporation, intervenor in the
228 hereinbefore entitled action; that he has read the foregoing complaint in intervention and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief, and the reason why this verification is not made by one of the officers of plaintiff is that they are all absent from the County of Ramsey, aforesaid, in which county this deponent resides.

JAMES E. TRASK.

Subscribed and sworn to before me this 26th day of September, 1906.

[NOTARIAL SEAL.] JNO. M. BRADFORD,
Notary Public, Ramsey County, Minn.

My commission expires January 1st, 1909.

Endorsed: "Filed Oct. 3, 1906. Edward G. Rogers, Clerk, by F. J. Greene, Deputy." Due service admitted.

STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD AND COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOAN CO., a Corporation, Defendant.

Complaint Stating Claims of E. G. Higgins Company.

And now comes E. G. Higgins Company, a corporation, and creditor of said defendant, Evans, Johnson, Sloan Co., and hereby files and presents its claim against said defendant herein and becomes a party to this action, under and pursuant to the order of the Court made and filed herein on the 28th day of June, 1906, and in that behalf represents to the court and alleges:

That during all the times hereinafter stated said E. G. Higgins Company was and is a corporation duly organized and created under and by virtue of the laws of the State of Massachusetts.

That between the 12th day of April, 1904, and the 26th day of July, 1904, said E. G. Higgins Company at the special instance and request of said defendant, Evans, Johnson, Sloan Co., sold and delivered to said defendant goods, wares and merchandise, which were then worth and of the agreed value of $53.67, which sum said defendant promised and agreed to pay therefor. That, although due and duly demanded, said sum has not been paid, nor any part thereof, except the sum of $5.39.

Wherefore, said E. G. Higgins Co. demands judgment herein against said defendant, Evans, Johnson, Sloan Co., for the sum of

$48.28, with interest thereon from the 15th day of June,
229 1905, and asks that said claim be allowed herein for said amount, with interest.

JAMES E. TRASK,
Attorney for E. G. Higgins Company.

STATE OF MINNESOTA,
County of Ramsey, ss:

James E. Trask, being first duly sworn, deposes and says that he is the attorney for the above named creditor, E. G. Higgins Company; that he has read the foregoing complaint of said creditor, and that the same is true according to the best of his knowledge, information and belief, and that the reason for his making this verification is that none of the officers of said E. G. Higgins Company are now present within said Ramsey County, where deponent resides.

JAMES E. TRASK

Subscribed and sworn to before me on this 31st day of July, 1906.
[NOTARIAL SEAL.] CHARLES BECHHOEFER,
Notary Public, Ramsey County.

My commission expires Dec. 13, 1908.

Indorsed: "Filed July 31, 1906. Edward G. Rogers, Clerk, by G. A. Johnson, Deputy." Due service admitted.

230 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

Complaint of Holden & Fuller, in Intervention.

Holden & Fuller, creditors of the above named defendant,
231 Evans, Johnson, Sloane Company, file their complaint in intervention for the purpose of presenting their claim against the said defendant corporation, as hereinbefore set forth, and for the purpose of becoming parties to this action under and pursuant to the order of this Court made herein on the 28th day of June, 1906, in that behalf, and said creditors, Holden & Fuller, represent to this Court and allege:

1. That the defendant is now and at all times hereinafter mentioned it was a corporation duly organized, created and existing under and by virtue of the laws of the State of Minnesota.

2. That at the times herein mentioned the above named creditors, Holden & Fuller, were and now are co-partners, said copartnership being composed of George S. Holden, Henry L. Holden, Mary A.

Holden and Charles E. Fuller, doing business under the firm name and style of Holden & Fuller.

That heretofore and on the 15th day of August, 1904, at the special instance and request of said defendant, Evans, Johnson, Sloane Company, the said Holden & Fuller sold and delivered to said defendant goods, wares and merchandise then worth and of the reasonable value of one hundred twenty-eight and 93-100 dollars, which the said defendant agreed to pay therefor on the 25th day of October, 1904; that, though often demanded, the said defendant has not paid the same, or any part thereof, except the sum of twelve and 90-100 dollars.

Wherefore, Holden & Fuller pray judgment of this Court herein that their claim against the said defendant be allowed in this action for the sum of one hundred sixteen and 3-100 dollars, with interest thereon at the rate of six per cent per annum from the 25th day of October, 1904; that said Holden & Fuller may become parties to this action and have judgment against the said defendant in the said sum of one hundred sixteen and 3-100 dollars, with interest thereon, as aforesaid, and have all that relief in this action as demanded by the complaint, the same as if the said creditor- had been parties thereto, and pray such further and other relief in the premises as to this Court shall seem meet.

JNO. M. BRADFORD,
Attorney for Holden & Fuller.

STATE OF MINNESOTA,
County of Ramsey, ss:

Jno. M. Bradford, being first duly sworn, deposes and says he is one of the attorneys for the plaintiff- in the heretofore en-
232 titled action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief; and the reason why this verification is not made by one of the plaintiffs is that they are all absent from the County of Ramsey, aforesaid, in which county this deponent resides.

JNO. M. BRADFORD.

Subscribed and sworn to before me this 27th day of Sept., 1906.

[NOTARIAL SEAL.] S. I. LOUGHRAN,
Notary Public, Ramsey County, Minn.

My commission expires January 29th, 1909.

Endorsed: "Filed Oct. 3, 1906. Edward G. Rogers, Clerk, by T. J. Greene, Deputy." Due service admitted.

233 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

Complaint of J. P. Logan & Son in Intervention.

J. P. Logan & Son, creditors of the above named defendant, Evans, Johnson, Sloane Company, file their complaint in intervention for the purpose of presenting their claim against the said defendant corporation, as hereinbefore set forth, and for the purpose of becoming parties to this action under and pursuant to the order of this Court made herein on the 28th day of June, 1906, in that behalf, and said creditors, J. P. Logan & Son, represent to this Court and allege:

1. That the defendant is now and at all times hereinafter mentioned it was a corporation duly organized, created and existing under and by virtue of the laws of the State of Minnesota.

2. That the said creditors now are and at all times herein
234 mentioned they were co-partners doing business under the firm name and style of J. P. Logan & Son, said co-partnership being composed of J. P. Logan and Charles P. Logan.

That on or about the 16th day of April, 1904, at the special instance and request of said defendant, Evans, Johnson, Sloane Company, the said J. P. Logan & Son sold and delivered to said defendant goods, wares and merchandise then worth and of the reasonable value of three hundred one and 87-100 dollars, which said defendant agreed to pay therefor on the 16th day of May, 1904; that though often demanded, the said defendant has not paid the same, or any part thereof, except the sum of thirty and 15-100 dollars.

Wherefore, said J. P. Logan & Son pray judgment of this Court herein that their claim against the said defendant be allowed in this action for the sum of two hundred seventy-one and 42-100 —, with interest thereon at the rate of six per cent per annum from the 16th day of May, 1904; that said J. P. Logan & Son may become parties to this action and have judgment against the said defendant in the said sum of two hundred seventy-one and 42-100 dollars, with interest thereon, as aforesaid, and have all that relief in this action as demanded by the complaint, the same as if the said creditors had been parties thereto, and pray such further and other relief in the premises as to this Court shall seem meet.

JNO. M. BRADFORD,
Attorney for J. P. Logan & Son.

STATE OF MINNESOTA,
County of Ramsey, ss:

John M. Bradford, being first duly sworn, deposes and says that he is the attorney for the plaintiff co-partnership, intervenor in the

hereinbefore entitled action; that he has read the foregoing complaint in intervention and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief; and the reason why this verification is not made by one of the copartners is that they are absent from the County of Ramsey, aforesaid, in which county this deponent resides.

JNO. M. BRADFORD.

Subscribed and sworn to before me this 27th day of September, 1906.

[NOTARIAL SEAL.] S. I. LOUGHRAN,
Notary Public, Ramsey County, Minnesota.

My commission expires January 29th, 1909.

Endorsed: "Filed Oct. 3, 1906. Edward G. Rogers, Clerk, by T. J. Greene, Deputy." Due service admitted.

235 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & Co., Plaintiff,
vs.
EVANS, JOHNSON, SLOANE Co., Defendant.

Comes now Frank W. Pinska and asks leave of the above named Court to intervene in this action and present his claim therein, and alleges:

236 That prior to the 18th day of September, 1905, said defendant entered into a written agreement with said Pinska (hereinafter called "complainant"), whereby it leased to him certain departments known as the Corset Department and the Art Department, in premises situate in the City of Minneapolis, Minnesota, in which said defendant corporation was conducting a department store, and as rental therefor it was agreed that complainant should pay a certain percentage of the sales made by him in said departments and that all monies received from such sales should be delivered to said defendant as received, and that it should account to complainant and pay the same over weekly after deducting its said percentage, and that said agreement was in full force and effect during all the times herein mentioned.

That between the 18th day of September, 1905, and the 27th day of said month, said defendant corporation received the sum of $797.65 of monies belonging to complainant for sales made in said departments and under said agreement, and that on said last mentioned date there was still due and owing from said defendant to complainant after deducting said percentage and all other sums due it, the sum of five hundred and ninety-five and 26-100 dollars ($595.26), no part of which has been paid, excepting the sum of

of $121.72 received by complainant as a dividend out of the estate of said corporation on the 7th day of December, 1906.

Wherefore, complainant prays judgment in his favor in this action for the sum of four hundred and seventy-three and 54-100 dollars, and interest on $595.26 from September 27, 1905, to December 7, 1906, and on $473.54 from and after December 7, 1906, and for such other and further relief as may be just.

S. MEYERS,
Attorney for Complainant.

614 Phœnix Building, Minneapolis, Minnesota.

STATE OF MINNESOTA,
County of Hennepin, ss:

S. Meyers, being duly sworn, says that he is the attorney for the complainant herein; that the foregoing complaint is true to the best of his knowledge, information and belief, and that the reason this verification is made by him is that said complainant is absent from Hennepin County, wherein affiant resides.

S. MEYERS.

237 Subscribed and sworn to before me this 21st day of December, 1906.

[NOTARIAL SEAL.] H. D. IRWIN,
Notary Public, Hennepin County, Minnesota.

My commission expires Jan. 9, 1909.

Endorsed: Filed Dec. 22, 1906. Edward G. Rogers, Clerk, by G. A. Johnson, Deputy. Due service admitted.

238 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

Complaint of Charles Kohlmann in Intervention.

239 Now comes Charles Kohlmann, a creditor of the above named Evans, Johnson, Sloane Company, and files his complaint in intervention for the purpose of presenting his claim against the said defendant corporation as hereinafter set forth, and for the purpose of becoming a party to this action, under and pursuant to the order of this Court, made herein on the 28th day of June, 1906, and the said creditor, Charles Kohlmann, represents to this Court and alleges as follows:

1. That the defendant is now and at all times hereinafter men-

tioned was a corporation, duly organized, created and existing under and by virtue of the laws of the State of Minnesota.

2. That heretofore, to-wit, on the 21st day of July, 1904, the said defendant, Evans, Johnson, Sloane Company, made, executed and delivered to the order of themselves their certain promissory note, dated July 21st, 1904, wherein and whereby the said defendant promised to pay to its own order the sum of five thousand dollars ($5,000) on December 31st, 1904, at the Mercantile National Bank of New York, with interest thereon before and after maturity.

3. That on the said day the said defendant, Evans, Johnson, Sloane Company, duly endorsed the said note in blank and delivered the same to the said intervening complainant, Charles Kohlmann, who at said times paid to said defendant therefor the full sum of five thousand dollars ($5,000), named in said note, less interest to maturity.

4. That no part of said note has ever been paid, except the sum of five hundred and thirty-five dollars ($535), paid thereon April 12th, 1906, and the sum of five hundred and fifty-nine and 7-100 dollars ($559.07), paid thereon December 1st, 1906, both of which payments were dividends paid to the said intervening complainant by the Trustees in Bankruptcy of the said Evans, Johnson, Sloane Company in bankruptcy proceedings against said defendant in the United States District Court of the District of Minnesota, Fourth Division.

Wherefore, said Charles Kohlmann prays judgment of this Court that his claim against the said defendant be allowed in this action for the sum of four thousand six hundred and five and 93-100 dollars ($4,605.93), with interest thereon at the rate of six per cent (6%) per annum from the first day of December, 1906; that said Charles Kohlmann may become a party to this action and have judgment against the said defendant for the said sum, with interest thereon as aforesaid, and for all the relief in this action which is demanded by the complaint, as fully as if the said creditor
240 had been a party thereto, and prays such other and further relief in the premises as to this Court shall seem meet.

COHEN, ATWATER & SHAW,
Attorneys for Intervening Complainants,
Charles Kohlmann.

313 Nicolet Avenue, Minneapolis, Minn.

STATE OF NEW YORK,
County of New York, ss:

Charles Kohlmann, being first duly sworn, says that he is the intervening complainant named in the foregoing complaint in intervention; that he has read the contents of the said complaint and knows the same, and that the same is true of his own knowledge, except as to those matters stated on information and belief, and as to those matters he believes them to be true.

CHARLES KOHLMANN.

Subscribed and sworn to before me this 18th day of December, 1906.

[SEAL.] WM. J. NAGEL,
Notary Public, County of New York,
State of New York.

My commission expires March 30, 1907.

Endorsed: "Filed Dec. 23, 1906. Edward G. Rogers, Clerk, by G. A. Johnson, Deputy." Due service admitted.

STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

Complaint of The Journal Printing Company, (a Corporation) in Intervention.

Now comes The Journal Printing Company, a creditor of the above named Evans, Johnson, Sloane Company, and files its complaint in intervention for the purpose of presenting its claim against the defendant corporation, as hereinafter set forth, and for the purpose of becoming a party to this action, under and pursuant to the order of this Court, made herein on the 28th day of June, 1906, and the said creditors, The Journal Printing Company, represents to this Court and alleges as follows:

1. That the said plaintiff and the said defendant are now, and at all times hereinafter mentioned were, each corporations, duly
241 organized, created and existing under and by virtue of the laws of the State of Minnesota.

2. That heretofore, to-wit, between the first day of December, 1902, and the 27th day of December, 1905, both dates inclusive, the said The Journal Printing Company furnished to said Evans, Johnson, Sloane Company, at its request, certain advertising in the certain daily newspaper published in the City of Minneapolis, known as "The Minneapolis Journal," of the reasonable worth and value of thirty-two thousand and ninety-six and 35-100 dollars ($32,096.35): that no part of said sum has been paid, except the sum of seventeen thousand one hundred and ninety-one and 46-100 dollars ($17,191.46), paid at various times prior to the 27th day of September, 1905, and the sum of three thousand and forty-seven and 60-100 dollars ($3,047.60) at various times between said September 27th, 1905, and December 1st, 1906, which last described payments were paid to said intervening complainant by the Trustees in Bankruptcy of the said Evans, Johnson, Sloane Company as dividends in bankruptcy proceedings against said defendant in the United States District Court of the District of Minnesota, Fourth Division.

3. That heretofore, to-wit, on or about the 27th day of September, 1905, said The Journal Printing Company assigned a portion of its said claim to Frank W. Shaw, and that thereafter the said Frank W. Shaw, for a valuable consideration, duly assigned all of his right, title and interest in and to said claim to said The Journal Printing Company, who is now the holder and owner of all thereof.

Wherefore, said The Journal Printing Company, intervener, prays the judgment of this Court that its claim against said defendant be allowed in this action for the sum of eleven thousand eight hundred and fifty seven and 20-100 dollars ($11,857.20), with interest thereon at the rate of six per cent (6%) from the 27th day of September, 1905, and that said intervenor may become a party to this action and have judgment against the said defendant for said sum, with interest thereon as aforesaid, and for all the relief in this action which is demanded by the said complainant, as fully as if the said creditor had been a party thereto, and prays such other and further relief in the premises as to this Court may seem meet.

COHEN, ATWATER & SHAW,
Attorneys for The Journal Printing Company, Intervenor.

313 Nicollet Avenue, Minneapolis, Minn.

242 STATE OF MINNESOTA,
County of Hennepin, ss:

Lucian Swift, being first duly sworn, says that he is the treasurer of the Journal Printing Company, the intervening complainant named in the foregoing complaint in intervention; that he has read the contents of the said complaint and knows the same, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

LUCIAN SWIFT.

Subscribed and sworn to before me this 26th day of December, 1906.

[NOTARIAL SEAL.] JAMES H. CHESTNUT,
Notary Public, Hennepin County, Minnesota.

My Commission expires August 7, 1913.

Endorsed: "Filed Dec. 28, 1906. Edward G. Rogers, Clerk, by G. A. Johnson, Deputy." Due service admitted.

STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

Complaint of Minnesota Tribune Company.

The Minnesota Tribune Company, becoming a party to the above entitled action, and filing its claim therein and complying with the orders or said Court pertaining to the filing of claims in said action by creditors of said Evans, Johnson, Sloane Company, alleges:

I.

1. That the Minnesota Tribune Company, during all the times hereinafter mentioned was and still is a corporation, duly organized, created and existing under and by virtue of the laws of the State of Minnesota, and is and during all the times herein mentioned has been engaged in publishing, at the City of Minneapolis, Minnesota, and in circulating in Minneapolis and throughout the Northwest, the following newspapers, to-wit: The Minneapolis Tribune, which is and has been during all the times herein mentioned published and circulated every day, excepting Sundays; The Evening Tribune, which is and has been during all the times herein mentioned, published and circulated every day excepting Sundays; and The
243 Sunday Tribune, which is and has been during all the times herein mentioned, published and circulated every Sunday; that each of said newspapers has now and during all the times herein mentioned has had a wide circulation, and is, and during all said times has been, delivered to a large number of subscribers thereto, purchasers thereof and readers thereof.

2. That said Evans, Johnson, Sloane Company, during all the times hereinafter mentioned was and still is a corporation, duly organized, created and existing under and by virtue of the laws of the State of Minnesota.

3. That at Minneapolis, Minnesota, on and between the 1st day of July, 1904, and May 31st, 1905, both dates inclusive, said Minnesota Tribune Company furnished and delivered to said Evans, Johnson, Sloane Company, at the latter's special instance and request, services and advertising in its newspapers above named, and at the special instance and request of said Evans, Johnson, Sloane Company, printed its advertisements in its said newspapers; that said advertising and services so furnished were and are of the reasonable value and agreed price of fifteen thousand, one hundred eighty-four and 21-100 dollars ($15,184.21), which sum said Evans, Johnson, Sloane Company agreed to pay said Minnesota Tribune Company, therefor.

4. That no part of said sum has ever been paid, although the same is long past due and payment thereof has been duly demanded, excepting the sum of two thousand nine hundred forty and 72-100 dollars ($2,940.72), paid thereon on and between September 13th, 1904, and June 19th, 1905, and the sum of one thousand two hundred forty-eight and 23-100 dollars ($1,248.23), paid thereon on April 12th, 1906, and the sum of one thousand three hundred four and 41-100 dollars ($1,304.41), paid thereon on December 10th, 1906, both of said last named sums being dividends on the amount due on said account paid by the Trustees in Bankruptcy of said Evans, Johnson, Sloane Company, in bankruptcy proceedings against it in the United States District Court, District of Minnesota, Fourth Division, leaving still due and unpaid on said account to the Minnesota Tribune Company the sum of nine thousand, six hundred ninety and 85-100 dollars ($9,690.85), with interest; that said account was heretofore assigned by said Minnesota Tribune Company to Rome G. Brown, and that the same was heretofore reassigned by said Brown to said Minnesota Tribune Company, which is now the owner and holder thereof.

244 II.

For a second claim and cause of action against said Evans, Johnson, Sloane Company, and for a second claim herein, said Minnesota Tribune Company re-alleges the allegations set forth in the first count of this complaint and makes the same a part of this count, and alleges:

1. That at Minneapolis, Minnesota, on and between June 1st, 1905, and September 27th, 1905, both dates inclusive, said Minnesota Tribune Company furnished and delivered to said Evans, Johnson, Sloane Company, at the latter's special instance and request, services and advertising in its newspapers above mentioned, and at the special instance and request of said Evans, Johnson, Sloane Company, printed its advertisements in its newspapers; that said advertising and services so furnished were and are of the reasonable value and agreed price of three thousand, nine hundred seventy-six and 47-100 dollars ($3,976.47), which sum said Evans, Johnson, Sloane Company agreed to pay said Minnesota Tribune Company therefor.

2. That no part of said sum has ever been paid, although the same is long past due and payment thereof has been duly demanded, excepting the sum of one thousand, three hundred forty-five and 19-100 dollars ($1,345.19), paid thereon on July 5th, 1905, and the sum of two hundred sixty-three and 13-100 dollars ($263.13), paid thereon on April 12th, 1906, and the sum of two hundred seventy-three and 97-100 — ($273.97) paid thereon December 10th, 1906, both of said last two sums being dividends on said account paid by the Trustees in Bankruptcy of said Evans, Johnson, Sloane Company in bankruptcy proceedings against it in the United States District Court, District of Minnesota, Fourth Division, leaving still due and unpaid on said account to said Minnesota Tribune Company, the sum of two thousand ninety-four and 18-100 dollars ($2,094.18) and interest.

III.

For a third claim and cause of action against said Evans, Johnson, Sloane Company, and for a third claim herein, said Minnesota Tribune Company re-alleges all of the allegations set forth in the first count of this complaint and makes the same a part hereof, and alleges:

1. That the Times Newspaper Company, during all the times hereinafter mentioned was and still is a corporation duly organized, created and existing under and by virtue of the laws of the State of Minnesota; and said Times Newspaper Company, during all
245 the times herein mentioned, was engaged in publishing, at the city of Minneapolis, Minnesota, and in circulating, in said city of Minneapolis and throughout the Northwest, the following newspapers, to-wit: The Minneapolis Daily Times, which was, during all the times herein mentioned, published and circulated every day excepting Sundays, and the Sunday Times, which was, during all the times herein mentioned, published and circulated every Sunday; that each of said newspapers, during all the times herein mentioned had a wide circulation, and during all said times was delivered to a large number of subscribers thereto, purchasers thereof and readers thereof.

2. That at Minneapolis, Minnesota, on and between March 1st, 1904, and September 23rd, 1905, both dates inclusive, said The Times Newspaper Company furnished and delivered to said Evans, Johnson, Sloane Company, at the latter's special instance and request, services and advertising in its newspaper above named, and at the special instance and request of said Evans, Johnson, Sloane Company, printed its advertisements in its said papers; that said advertisements and services so furnished were and are of the reasonable value and agreed price of Ten Thousand, Eight Hundred sixteen and 46-100 dollars ($10,816.46), which sum said Evans, Johnson, Sloane Company agreed to pay said The Times Newspaper Company therefor;

3. That no part of said sum has ever been paid, although the same is long past due and payment thereof has been duly demanded, excepting the sum of Six Thousand, Eighty-five and 99-100 dollars ($6,085.99) paid thereon and between March 31st, 1904, and September 23rd, 1905, and the sum of Four Hundred Seventy-three and 5-100 dollars ($473.05) paid thereon on April 12th, 1906, and the sum of Four Hundred Ninety-four and 33-100 dollars ($494.33) paid thereon on December 10th, 1906, both of said last sums being dividends on said account paid by the Trustees in Bankruptcy of said Evans, Johnson, Sloane Company in bankruptcy proceedings against it in the United States District Court, District of Minnesota, Fourth Division, leaving still due and unpaid on said account the sum of Three Thousand, Seven Hundred Sixty-three and 9-100 dollars ($3,763.09) with interest;

4. That said account was, previous to the payment of said dividends above referred to, duly sold, assigned and transferred for a valuable consideration, by said The Times Newspaper Company to

the Minnesota Tribune Company, which is now the owner and holder thereof.

246 Wherefore, said Minnesota Tribune Company asks that it may become a party to this action and that it have judgment against said Evans, Johnson, Sloane Company, and herein for the sum of Fifteen Thousand, Five Hundred Forty-eight and 12-100 dollars ($15,548.12), with interest on Twelve Thousand Two Hundred Forty-three and 49-100 dollars ($12,243.49) from June 19th, 1905, to April 12th, 1906, and interest on Ten Thousand, Nine Hundred Ninety-five and 26-100 dollars ($10,995.26) from April 12th, 1906, until December 10th, 1906, and interest on Nine Thousand, Six Hundred Ninety and 85-100 ($9,690.85) since December 10th, 1906, all at the rate of six per cent (6%) per annum, and interest on Two Thousand, Six Hundred Thirty-one and 28-100 dollars ($2,631.28) from September 27th, 1905, until April 12th, 1906, and interest on Two Thousand, Three Hundred Sixty-eight and 15-100 dollars ($2,368.15) from April 12th, 1906, until December 10th, 1906, and interest on Two Thousand, Ninety-four and 18-100 dollars ($2,094.18) since December 10th, 1906, all at the rate of six per cent (6%) per annum, and interest on Four Thousand, Seven Hundred Thirty and 47-100 dollars ($4,730.47) from September 23rd, 1905, to April 12th, 1906, and interest on Four Thousand, Two Hundred Fifty-seven and 42-100 dollars ($4,730.47) from April 12th, 1906, to December 10th, 1906, and interest on Three Thousand Seven Hundred Sixty-three and 9-100 dollars ($3,763.09) since December 10th, 1906, all at the rate of six per cent (6%) per annum, together with said Minnesota Tribune Company's costs and disbursements herein, and said Minnesota Tribune Company asks that its claim be received, filed and allowed in this action for said sum and interest, as above demanded and that it have and recover said sum and interest in this action and that it receive payment thereof in this action on an equal basis with all other creditors whose claims are filed and allowed herein, and that it have all the benefits of this action to the same extent as if it had originally been a party plaintiff therein, and said Minnesota Tribune Company asks that it have such other and further relief in this action as to the Court may seem just and proper.

Dated December 31st, 1906.

ROME G. BROWN &
CHARLES S. ALBERT,
Attorneys for said Minnesota Tribune Company,
1006 *Guaranty Building, Minneapolis, Minnesota.*

247 STATE OF MINNESOTA,
County of Hennepin, ss:

E. P. Stewart, being first duly sworn, says that he is the auditor of the Minnesota Tribune Company named in the foregoing complaint, that he has read the foregoing complaint and that the same is true of his own knowledge except as to those matters therein stated upon information and belief, and that as to such matters he believes the same to be true.

E. P. STEWART.

Subscribed and sworn to before me this 31st day of December, 1906.

[NOTARIAL SEAL.] ARNOLD L. GUNNER,
Notary Public, Hennepin County, Minn.

My Commission expires August 20, 1909.

Endorsed: Filed Dec. 31, 1906. Edward G. Rogers, Clerk, by G. A. Johnson, Deputy. Due service admitted.

248 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

Now comes Wm. Bens, creditor of the above named Evans, Johnson, Sloane Company, and files his complaint in intervention for the purpose of presenting his claim against said corporation, as hereinafter set forth, and for the purpose of becoming a party to this action under and pursuant to the order of this Court of date June 28, 1906, and represent- and allege- as follows, to-wit:

1. That the defendant is a corporation organized and existing under and by virtue of the laws of the State of Minnesota.

2. That heretofore, to-wit: Between the first day of January, 1904, and the 1st day of July, 1905, the said intervenor at the special instance and request of the said defendant, sold, furnished and delivered to said defendant goods, wares and merchandise, which were then and there reasonably worth and of the value of the
249 sum of $22.88, which sum said defendant promised and agreed to pay this intervenor therefor.

3. That no part of said account has been paid, except the sum of $1.29 paid thereon on or about the 12th day of April, 1906, and the further sum of $1.39, paid thereon on or about the 8th day of December, 1906, both of which payments were dividends paid to said intervenor as a creditor aforesaid by the trustee in bankruptcy of said Evans, Johnson, Sloane Company in bankruptcy proceedings against said defendant in the District Court of the United States in and for the District of Minnesota, Fourth Division.

Wherefore, said intervening creditor prays the judgment of this Court that his claim against said defendant be allowed in this action for the sum of $20.20, with interest thereon from December 8, 1906, at the rate of six per cent per annum, and that said intervening creditor may become a party in said action, and for judgment against said defendant for said sum with interest as aforesaid, as if said intervening creditor had been a party thereto, and for such other and further relief in the premises as to the Court may seem just.

FIFIELD, FLETCHER, LARIMORE & FIFIELD,
Attorneys for Intervenor, 719 Andrus Building, Minneapolis, Minn.

STATE OF MINNESOTA,
County of Hennepin, ss:

John A. Larimore, being first duly sworn, says that he is one of the attorneys for the intervening creditor in the above entitled action. That he has read the foregoing complaint in intervention and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief. That the reason why this verification is not made by the said creditor personally is that he is absent from the County of Hennepin, Minnesota, wherein affiant resides and has his law office.

JOHN A. LARIMORE.

Subscribed and sworn to before me this 29th day of December, 1906.

[NOTARIAL SEAL.] FRANK M. McCARTHY,
Notary Public, Hennepin County, Minnesota.

My commission expires December 14, 1912.

Endorsed: 93657. Complaint in intervention of Wm. Bens. Filed Dec. 29, 1906. Edward G. Rogers, Clerk, by G. A. Johnson, Deputy. Due service of within admitted Dec. 12, 1906. Morphy, Ewing & Bradford, by F. H. Ewing.

250 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plai-tiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

Now comes Edwin Lowe, doing business as Edwin Lowe & Co. creditor of the above named Evans, Johnson, Sloane Com-
251 pany, and files his complaint in intervention for the purpose of presenting his claim against said defendant corporation, as hereinafter set forth, and for the purpose of becoming a party to this action under and pursuant to the order of this Court of date June 28, 1906, and represent- and alleges as follows, to-wit:

1. That the defendant is a corporation organized and existing under and by virtue of the laws of the State of Minnesota, and that he is engaged in business as Edwin Lowe & Co.

2. That heretofore, to-wit: Between the first day of January, 1904, and the first day of July, 1905, the said intervenor at the special instance and request of the defendant corporation, sold furnished and delivered to said defendant goods, wares and merchandise, which were then and there reasonable worth and of the value of the sum of $185.96, which said sum said defendant promised and agreed to pay said intervenor therefor.

3. That no part of said account has been paid except the sum of

$20.40 paid thereon on or about the 12th day of April, 1906, and the further sum of $21.32 paid thereon on or about the 8th day of December, 1906, both of which payments were dividends paid to said intervenor as creditor aforesaid by the trustees in bankruptcy of the said Evans, Johnson, Sloane Company, in bankruptcy proceedings against said defendant in the District Court of the United States, in and for the District of Minnesota, Fourth Division.

Wherefore, said intervening creditor prays the judgment of this Court that his claim against said defendant be allowed in this action in the sum of $147.02, and that said intervening creditor may become a party in said action, and for judgment against said defendant for said sum with interest thereon as aforesaid, as if said intervening creditor had been a party thereto, and that he have such other and further relief in the premises as to this Court may seem meet and just.

FIFIELD, FLETCHER, LARIMORE & FIFIELD,
Plaintiffs *for Intervenor*, 719 *Andrus Bldg., Minneapolis, Minn.*

STATE OF MINNESOTA,
County of Hennepin, ss:

John A. Larimore, being first duly sworn, says that he is one of the attorneys for the intervening creditor in the above entitled action. That he has read the foregoing complaint in intervention and knows the contents thereof and that the same is true to the best of his knowledge, information and belief. That the reason why this verification is not made by the said creditor personally
252 is that each and all of the officers of said intervening creditor are absent from the County of Hennepin, State of Minnesota, wherein affiant resides and has his law office.

J. H. LARIMORE.

Subscribed and sworn to before me this 29th day of December, 1906.

[NOTARIAL SEAL.] FRANK M. McCARTHY,
Notary Public, Hennepin County, Minn.

My commission expires December 14, 1902.

Endorsed: 93657. Complaint in Intervention of Edwin Lowe. Filed Dec. 29, 1906. Edward G. Rogers, Clerk, by G. A. Johnson, Deputy. Due service of within admitted Dec. 29, 1906. Morphy, Ewing & Bradford, By F. H. Ewing.

253 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

Now come W. Blackinton and S. Blackinton, partners as W. & S. Blackinton, creditors of the above named Evans, Johnson, Sloane Company, and file their complaint in intervention for the purpose of presenting their claim against said defendant corporation, as hereinafter set forth, and for the purpose of becoming a
254 party to this action under and pursuant to the order of this Court of date June 28, 1906, and represent and allege as follows, to wit:

1. That the defendant is a corporation organized and existing under the laws of the State of Minnesota, and that the intervenors are copartners in business under the firm name and style of W. & S. Blackinton Company.

2. That heretofore, to-wit, between the first day of January, 1904, and the first day of July, 1905, said intervenors, at the special instance and request of the defendant, sold, furnished and delivered unto the defendant goods, wares and merchandise then and there worth and of the reasonable value of the sum of $369.09, which sum said defendant promised and agreed to pay said intervenors therefor.

3. That the defendant has not paid said account or anything on account thereof, except the sum of $34.45 paid thereon on or about the 12th day of April, 1906, and the further sum of $36 paid thereon on or about the 8th day of December, 1906, both of which payments were dividends paid to said intervenors as creditors aforesaid by the trustees in bankruptcy of said Evans, Johnson, Sloane Company, in bankruptcy in the United States District Court in and for the District of Minnesota, Fourth Division.

Wherefore, said intervening creditors, as partners as aforesaid, pray the judgment of this Court that their claim against said defendant be allowed in this action for the sum of $298.64, with interest thereon since the 8th day of December, 1906, at the rate of six per cent per annum, and that said intervening creditors may become parties in said action, and for judgment against said defendant for said sum, with interest as aforesaid, as if said intervening creditors had been parties thereto, and that they have such other and further relief as to the Court may seem meet in the premises.

FIFIELD, FLETCHER, LARIMORE & FIFIELD,
Attorneys for Intervenors, 719 Andrus Building, Minneapolis, Minn.

STATE OF MINNESOTA,
County of Hennepin, ss:

John A. Larimore, being first duly sworn, says he is one of the attorneys for the intervening creditor in the above entitled action. That he has read the foregoing complaint in intervention and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief. That the reason why
255 this verification is not made by the said creditor personally is that he is absent from the County of Hennepin, Minnesota, wherein affiant resides and has his law office.

J. A. LARIMORE,

Subscribed and sworn to before me this 29th day of December, 1906.

[NOTARIAL SEAL.] FRANK M. McCARTHY,
Notary Public, Hennepin County, Minnesota.

My commission expires 12-14-1902.

Endorsed: 93657. Complaint in Intervention of W. & S. Blackinton Company. Filed Dec. 29, 1906. Edward G. Rogers, Clerk, by G. A. Johnson, Deputy. Due service of within admitted 12-29-1906. Morphy, Ewing & Bradford, by F. H. Ewing.

256 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

Complaint of Stephen Sanford and Sons in Intervention.

Stephen Sanford and Sons, creditors of the above named defendant, Evans, Johnson, Sloane Company, file their complaint in intervention for the purpose of presenting their claim against the said defendant corporation, as hereinafter set forth, and for the purpose of becoming a party to this action under and pursuant to the order of this Court herein made on the 28th day of June, 1906, as modified by order made herein on the 5th day of January, 1907, and said creditors, Stephen Sanford and Sons, represent to this Court and allege:

1. That the defendant is now and at all times herein mentioned it was a corporation duly organized, created and existing under and by virtue of the laws of the State of Minnesota.

2. That the above named creditors, Stephen Sanford & Sons, are now and at all times herein mentioned were copartners doing business under the firm name and style of Stephen Sanford and Sons, said firm being composed of Stephen Sanford and John Sanford.

3. That heretofore and on and between the 27th day of April, 1904, and the 11th day of November, 1904, at the special instance and request of said defendant, Evans, Johnson, Sloane Company, the said creditors, Stephen Sanford and Sons, sold and delivered to said defendant goods, wares and merchandise then worth and of the reasonable value of $1,903.50, which said sum the said defendant agreed to pay therefor on the 1st day of November, 1904; that, though often demanded, the said defendant has not paid the
257 same, or any part thereof, except the sum of $389.27, the sum of $190.35 being paid on the 14th April, 1906, and the sum of $198.92 being paid on the 12th December, 1906.

Wherefore, said creditors, Stephen Sanford and Sons, pray judgment of this Court herein that their claim against the said defendant be allowed in this action at the sum of $1,514.23, with interest at the rate of six per cent per annum on the said sum of $1,903.50 from the said 1st day of November, 1904, to the 14th day of April, 1906, and interest at the rate aforesaid on the sum of $1,713.15 from the said 14t4h day of April, 1906, to the 12th day of December, 1906, and interest at the rate aforesaid on the said sum of $1,514.23 from the said 12th day of December, 1906, and that said creditors have judgment against said defendant for said sums and have all that relief in this action as demanded by said complaint, the same as if said creditors had been made parties thereto, and said creditors pray such further and other relief in the premises as to this Court shall seem meet.

MORPHY, EWING & BRADFORD,
Attorneys for Stephen Sanford and Sons.

STATE OF MINNESOTA,
County of Ramsey, ss:

John M. Bradford, being duly sworn, deposes and says he is one of the attorneys for the claimants in the heretofore entitled action; that he has read the foregoing complaint in intervention and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief, and the reason why this verification is not made by one of the plaintiffs is that they are all absent from the County of Ramsey, aforesaid, in which county this deponent resides.

JNO. M. BRADFORD.

Subscribed and sworn to before me this 11th day of January, 1907.

[NOTARIAL SEAL.] S. I. LOUGHRAN,
Notary Public, Ramsey County, Minn.

My commission expires January 29th, 1909.

Endorsed: 93,657. Complaint in Intervention. Stephen Sanford and Sons. Due personal service of a copy of the within complaint admitted this 11th January, 1907. E. H. Morphy. Jan. 15, 1907. Matt Jensen, Clerk, by G. A. Johnson.

258 STATE OF MINNESOTA.
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

Complaint of Alexander Crow, Jr., in Intervention.

Alexander Crow, Jr., creditor of the above named defendant Evans, Johnson, Sloane Company, files his complaint in intervention for the purpose of presenting his claim against the said defendant corporation as hereinafter set forth, and for the purpose of becoming a party to this action under and pursuant to the order of this Court herein made on the 28th day of June, 1906, as modified by order made herein on the 28th day of June, 1906, as modified by order made herein on the 5th day of January, 1907, and said creditor Alexander Crow, Jr., represents to this Court and al-eges:

1. That the defendant is now and at all times herein mentioned it was a corporation, duly organized, created and existing under and by virtue of the laws of the State of Minnesota.

2. That the said creditor Alexander Crow, Jr., is now and at all times herein mentioned he was doing business as Caledonia Carpet Mills.

3. That heretofore and on and between the 7th day of September, 1904, and the 16th day of September, 1904, at the special instance and request of the said defendant, Evans, Johnson, Sloane Company, the said creditor, Alexander Crow, Jr., sold and delivered to said defendant goods, wares and merchandise then worth and of the reasonable value of $491.50, which said sum the said defendant agreed to pay therefor within a reasonable time thereafter, which time has long since elapsed, and though often demanded the said defendant has not paid the same or any part thereof except the sum of $100.51; $49.15 paid on the 16th April, 1906, and $51.36 paid on the 13th December, 1906.

Wherefore, said creditor, Alexander Crow, Jr., prays judg-
259 ment of this Court herein that his claim against the said defendant be allowed in this action at the sum of $390.99, with interest on the said sum of $491.50 from the 16th day of September 1904, to the 16th of April, 1906, and interest at the rate aforesaid on the sum of $442.35 from the 16th day of April, 1906, to the 13th day of December, 1906, and with interest at the rate aforesaid on the sum of $390.99 from the said 13th day of December, 1906, and that said creditor have judgment against the said defendant for the hereinbefore mentioned sums and have all that relief in this action as demanded by said complaint the same as if said creditor had been made a party thereto, and said creditor prays such further and other relief in the premises as to this Court shall seem meet.

MORPHY, EWING & BRADFORD,
Attorneys for Alexander Crow, Jr.

STATE OF MINNESOTA,
County of Ramsey, ss:

Sander N. Nelson, being first duly sworn, deposes and says he is one of the attorneys for the claimant in the heretofore entitled action; that he has read the foregoing complaint in intervention and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief, and the reason why this verification is not made by the claimant is that he is absent from the County of Ramsey aforesaid, in which county this deponent resides.

SANDER N. NELSON.

Subscribed and sworn to before me this 18th day of January, 1907.

[NOTARIAL SEAL.] S. I. LOUGHRAN,
Notary Public, Ramsey County, Minn.

My commission expires January 29th, 1909.

Endorsed: Filed Jan. 19, 1907. Matt Jensen, Clerk, by T. G. Greene, Deputy. Due service admitted.

STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,

vs.

EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

Complaint of the John C. Uhlaub Oriental Rug Company in Intervention.

The John C. Uhrlaub Rug Company, creditor of the above named defendant Evans, Johnson, Sloane Company files its com-
260 plaint in intervention for the purpose of presenting its claim against the said defendant corporation, as hereinafter set forth, and for the purpose of becoming a party to this action under and pursuant to the order of this Court herein made on the 28th day of June, 1906, as modified by order made herein on the 5th day of January, 1907, and said creditor The John C. Uhrlaub Oriental Rug Company represents to this Court and alleges:

1. That the defendant is now and at all times herein mentioned it was a corporation duly organized, created and existing under and by virtue of the laws of the State of Minnesota.

2. That the said creditor The John C. Uhrlaub Oriental Rug Company is now and at all times herein mentioned it was a corporation duly organized, created and existing under and by virtue of the laws of the State of New York.

3. That heretofore and on and between the 30th day of March, 1904, and the 28th day of November, 1904, at the special instance

and request of said defendant Evans, Johnson, Sloane Company, the said creditor The John C. Uhrlaub Oriental Rug Company sold and delivered to said defendant goods, wares and merchandise then worth and of the reasonable value of $200.00, which said sum the said defendant agreed to pay therefor within a reasonable time thereafter, which time has long since elapsed; and though often demanded the said defendant has not paid the same or any part thereof, except the sum of $40.90, of which amount $20 was paid on the 16th of April, 1906, and $20.90 on the 13th of December, 1906.

Wherefore, said creditor the John C. Uhrlaub Oriental Rug Company prays judgment of this Court herein that its claim against the said defendant be allowed in this action at the sum of $159.10 with interest thereon at the rate of six per cent per annum on the said sum of $200 from the 28th day of November, 1904, to the 16th day of April, 1906, and interest at the rate aforesaid on $180 from the 16th day of April, 1906, to the 13th day of December, 1906, and interest at the rate aforesaid on the sum of $159.10 from the 13th day of December, 1906, and that said creditor have all that relief in this action as demanded by said complaint the same as if said creditor had been made a party thereto, and said creditor prays such further and other relief in the premises as to this Court shall seem meet.

JAMES E. TRASK.

Attorney for the John C. Uhrlaub Oriental Rug Company.

261 STATE OF MINNESOTA,
County of Ramsey, ss:

James E. Trask, being first duly sworn, deposes and says that he is the attorney for the plaintiff corporation, intervener in the hereinbefore entitled action; that he has read the foregoing complaint in intervention and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief, and the reason why this verification is not made by one of the officers of the plaintiff is that they are all absent from the County of Ramsey aforesaid, in which county this deponent resides.

JAMES E. TRASK.

Subscribed and sworn to before me this 15th day of February, 1907.

[NOTARIAL SEAL.] S. I. LOUGHRAN,
Notary Public, Ramsey County, Minn.

My commission expires January 29, 1909.

Endorsed: Filed Feb. 15, 1907. Matt Jensen, Clerk, by G. A. Johnson, Deputy. Due service admitted.

262 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & COMPANY, a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE COMPANY, a Corporation, Defendant.

Complaint in Intervention of Loeb & Schoenfeld Company, a Corporation.

Loeb & Schoenfeld Company, creditors of the above named defendant, Evans, Johnson, Sloane Company, for their complaint in intervention for the purpose of presenting their claim against the said defendant corporation, as hereinafter set forth, and for the purpose of becoming parties to this action under and pursuant to the order of this court made herein on the 28th day of June, 1905, in that behalf, allege:

That the defendant, Evans, Johnson, Sloane Company, is and during all the times hereinafter named has been a corporation duly created and organized unler the laws of the State of Minnesota.

That the said Loeb & Schoenfeld Company is, and during all times hereinafter named has been, a corporation duly created and organized under the laws of the State of New Jersey.

That on the 15th day of July, 1904, the said Evans, Johnson, Sloane Company made and delivered its promissory note, for value received, to said Loeb & Schoenfeld Company, which note is in words and figures as follows:

"5,000.00. MINNEAPOLIS, MINN., *July* 15, 1904.

One year after date we promise to pay to the order of Loeb & Schoenfeld Co. Five Thousand and no/100 Dollars, at their office, 451 Broadway, value received, with interest before and after maturity at the rate of 8 per cent per annum until paid.

EVANS, JOHNSON, SLOANE COMPANY,
W. E. JOHNSON, *Sec'y.*"

263 That no part of said note, or any interest thereon, has ever been paid, save the sum of Five Hundred Six ($506) Dollars which was paid thereon March 28th, 1906, by the trustees in bankruptcy of said Evans, Johnson, Sloane Company.

For a further cause of action said intervening plaintiff alleges that on February 27th, 1905, for value received, said Evans, Johnson, Sloane Company made and delivered its promissory note to said Loeb & Schoenfeld Company, in words and figures as follows:

"$5,000.00. MINNEAPOLIS, MINN., *Feb.* 27, 1905.

One year after date we promise to pay to the order of Loeb & Schoenfeld Co. Five Thousand and no/100 Dollars, at 451 Broad-

way, New York, value received, with interest before and after maturity, at the rate of 6 per cent per annum until paid.

EVANS, JOHNSON, SLOANE CO.,
Per W. E. JOHNSON, *Sec'y.*"

That no part of said note or interest thereon has ever been paid, except the sum of Five Hundred Seventeen and 50/100 Dollars ($517.50), which was paid thereon March 28th, 1906, by the trustee in bankruptcy of said Evans, Jhonsen, Sloane Company.

That between the dates January 4th, 1905, and September 30th, 1905, the said Loeb & Schoenfeld Company, while engaged in interstate commerce, sold to said Evans, Johnson, Sloane Company, goods, wares and merchandise for which the said Evans, Johnson, Sloane Company agreed to pay said Loeb & Schoenfield Company the total sum of Nine Thousand Two Hundred Seventy-one and 48/100 Dollars ($9,271.48), which was also the reasonable value of said goods, wares and merchandise.

That no part thereof has been paid except the sum of Nine Hundred Twenty-seven and 15/100 ($927.15) Dollars which was paid March 28th, 1906, by the trustees in bankruptcy of said Ev-
264 ans, Johnson, Sloane Company.

The said goods, wares and merchandise were sold on the dates and in the amounts following to-wit:

Jan. 4	$1,389.18
Jan. 7	98.83
Jan. 6	1,312.08
Jan. 24	205.01
Jan. 26	320.52
Feb. 27	1,041.93
Feb. 28	1,440.79
Mar. 7	129.20
Mar. 7	740.94
Mar. 7	75.00
Mar. 8	168.31
Apr. 6	449.36
Apr. 12	333.16
Apr. 12	78.73
Apr. 13	44.79
Apr. 13	71.75
Apr. 17	412.75
Apr. 21	86.59
Apr. 21	34.85
May 8	170.92
May 8	468.38
July 10	198.40
Total	$9,271.48

Wherefore, the said Loeb & Schoenfeld Company pray the judgment of this court herein that their claims against the said defendant be allowed in this action for the sum of Nineteen Thousand Two

Hundred Seventy-one, and 48/100 Dollars ($19,271.48), together with interest on Five Thousand Dollars, ($5,000.00) from the 15th day of July, 1904, at the rate of 8 per cent per annum, and with interest on the further sum of Five Thousand Dollars ($5,000.00) at the rate of 6 per cent per annum, from February 27th, 1905, and on the further sum of Nine Thousand Two Hundred Seventy-one and 48/100 ($9,271.48) Dollars from September 30th, 1905, less the payments made thereon as aforesaid, together with its costs and disbursements herein; and that said Loeb & Schoenfeld Com-
265 pany may become parties to this action, and have judgment against the said defendant in the sum of Nineteen Thousand Two Hundred Seventy-one and 48/100 ($19,271.48) Dollars, with interest thereon as aforesaid, less the payments made thereon as above set forth, and that they have all the relief demanded in this action by the complaint the same as if the said creditors had been parties thereto, save that they make no allegation as to the names of the stockholders of said defendant, and that they have such further relief in the premises as to the court shall seem meet.

WALTER L. CHAPIN,
Attorney for Intervening Plaintiff.

(Duly verified.)

(Style of Cause.)

Answer to Complaint in Intervention of Loeb & Schoenfeld Company.

(Fol. 1.)

And now comes said plaintiff and Charles E. Hamilton, as receiver of said defendant, and for answer to the complaint in intervention, setting forth the claim of said Loeb & Schoenfeld herein, and for objections to said claim of said Loeb & Schoenfeld they respectfully represent to the court and allege:

First. That on or about the 19th day of April, 1902, said Evans, Johnson, Sloane Company became, ever since has been and now is, a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota; and that the general nature of its business, as provided by its articles of incorporation, was and is to buy, sell and deal in goods, wares and merchandise of every kind and nature.

(Fol. 2.)

That said corporation was so organized under the name of Evans Munzer, Pickering Company, by which name said corporation was known until about the 10th day of May, 1904, when the name of said corporation was duly changed to Evans, Johnson, Sloane Company, under which last mentioned name said corporation has
266 continued to transact its business, and by which it has ever since been and now is generally known.

(Fol. 3.)

Second. That on the 23rd day of October, 1905, the United States District Court, for the District of Minnesota, in bankruptcy proceedings then and there duly pending, and entitled "In the matter of Evans, Johnson, Sloane Company, bankrupt," duly made its order and rendered its judgment in said matter, adjudging said company a bankrupt; and that thereafter such further proceedings were duly had in said bankruptcy proceedings that on the 24th day of February, 1906, said bankruptcy court duly made and entered its order and judgment therein discharging said bankrupt.

Third. That thereafter and on or about the 28th day of May, 1906, said Marshall Field & Company, the plaintiff above named, as a creditor of said defendant Evans, Johnson *property* Sloane Company, duly commenced the above entitled action to sequestrate

(Fol. 4.)

the stock, property, things in action, assets and effects of said defendant, and the causes of action, to recover upon and enforce for the benefit of creditors of said defendant the superadded liability of its stockholders, and for the appointment of a receiver therefor with authority to collect such superadded liability under and pursuant to Chapter 272, of the General Laws of Minnesota for 1899; that the summons was duly served in this action upon said defendant company, and that on or about the 13th day of June, 1906, said defendant duly appeared and the court duly acquired jurisdiction over the parties to and the subject matter of this action.

(Fol. 5.)

That thereafter such proceedings were duly had in this action that on the 25th day of June, 1906, this court duly made, rendered, and entered its judgment herein sequestrating all the stock of said defendant, and all its property and the causes of action to enforce payment of the superadded liability of the stockholders of said defendant company, and ordering and adjudging that a receiver therefor and of said company be appointed, and duly ap-
267 pointing said Charles E. Hamilton as such receiver therein of all the stock, property, things in action, and the causes of action, to enforce payment of the said superadded liability of the

(Fol. 6.)

stockholders of said action with the usual powers and directions, and with authority and direction to bring and maintain actions at law or in equity to enforce payment of the liability of such stockholders wherever they, or any of them, may be found, whether in the State of Minnesota or elsewhere. That said receiver immediately qualified and has entered upon and is now in the discharge of his duties as such receiver. That said judgment and order were duly filed in this action on the 25th day of June, 1906, and are hereby referred to and made a part of this answer.

(Fol. 7.)

Fourth. That on the 28th day of June, 1906, said court duly made its order in this action authorizing and requiring the creditors

of said defendant to present their claims on or before six months after the date of the first publication of said order or be forever barred from sharing in any of the benefits of this action. That due notice of said order and notice was duly given as required by the terms of said order, and that within the time therein limited, and in the manner therein prescribed, a large number of persons, firms and corporations, exclusive of said Loeb & Schoenfeld Company, have become parties to this action as interveners therein, and duly exhibited their claims herein against said defendant, and proved the same, and that the claims so filed and proved amount in the aggregate to more than $150,000.00.

(Fol. 8.)

That all the property and assets which said company had or acquired prior to the commencement of this action were taken possession of by the trustees duly appointed by order of said bankruptcy court in said bankruptcy proceedings, and by them converted into money and distributed in said bankruptcy proceedings, and that the total amount so paid to creditors of said company in said bankruptcy proceedings is twenty and 45/100 cents on the dollar. That said defendant has not since the commencement of said bankruptcy proceedings acquired or had any property or
268 assets whatever, except said stockholders' liability fund, which fact was set forth in the complaint in this action, filed herein on the 28th day of May, 1906, and was well known to said Loeb & Schoenfeld Company when they filed their said complaint of intervention therein.

(Fol. 9.)

Fifth. That the capital stock of said defendant, as pro-ided and authorized by its articles of incorporation, was the sum of $250,000.00, divided into 2,500 shares, of the par value of $100 each; that said stock is divided into two classes denominated preferred and common, and that the amount of preferred stock so authorized was the sum of $100,000.00, or 1,000 shares, of the par value of $100 each; and the amount of said common stock so authorized was the sum of $150,000.00, or 1,500 shares, of the par value of $100 each; and that all of said stock, both common and preferred, has been issued and is now outstanding.

(Fol. 10.)

Sixth. That on the 6th day of July, 1906, said Charles E. Hamilton, as receiver of said defendant, as aforesaid, caused to be filed with and presented to this court in this action, pursuant to and in accordance with the laws in such case made and provided, a petition by said receiver praying, among other things, that said court order and direct and levy a ratable assessment upon each share of said stock of said defendant, and against each of the stockholders and persons, firms and corporations liable on account of said stock for such amount or percentage of said superadded liability of each and every stockholder of said company for its debts, as the court shall

(Fol. 11.)

deem proper, and praying that the said court determine, designate and appoint a time and place for hearing said petition and application, and direct such notices of said hearing to be given as said court should deem proper.

That on the said 6th day of July, 1906, said District Court of Ramsey County duly made and entered in said action its order upon plaintiff's said petition in pursuance to the provisions of Chapter 272, General Laws of Minnesota for 1899, that
269 notice designating and appointing the time and place for hearing upon said petition was given in and made a part of said order for hearing, and that notice of said order and hearing was duly given in the manner provided in said order; that said order and notice was duly published, that copies of said order

(Fol. 12.)

and notice were duly mailed, as therein directed, and that a copy of said order and notice was duly mailed to said defendant more than thirty days prior to the first day of September, 1906, the date of hearing upon said petition as specified in said order; that on the 1st day of September, 1906, said matter duly came on for hearing and was with consent of all parties duly adjourned to the 4th day of September, 1906, when said matter duly came on for final hearing, and at which time evidence was introduced by said receiver, and the matter was then duly argued by counsel, and duly heard and considered by this court, and thereafter and on the 4th day of September, 1906, this court duly made and entered its order of assessment in this action.

(Fol. 13.)

That said order of assessment was duly filed herein on the 4th day of September, 1906, and that the same is hereby referred to and made a part of this complaint. That by said order of assessment this court duly ordered and adjudged that an assessment equal to the par value of each share of the capital stock of said defendant, to-wit, the sum of $100.00 on each and every share of said capital stock, and upon and against the persons or parties liable as stockholders of said company, for, upon, or on account of, such shares of stock, that each and every person or party liable as such stockholder of said company pay, and was thereby ordered and required to pay said receiver, at his office, in the City of St. Paul, in said Ramsey County, State of Minnesota, within thirty days after the

(Fol. 14.)

date of said order the sum of $100.00 for and on account of each and every share of said stock for or upon which said persons, parties or corporations were liable as stockholders of said defendant company, and that in and by said order of assessment said receiver was ordered to give due notice of such order by mailing a copy of the
270 same within five days from the date thereof to each stockholder of said defendant whose name and address was known to said receiver, or to his attorney, or either of them; that due

notice of said order of assessment was duly given to all the stockholders of said defendant on the 7th day of September, 1906, as prescribed by said order; and that said $100.00 per share assessed as aforesaid was and is necessary to pay the said indebtedness of said defendant as proved up in this action as aforesaid.

(Fol. 15.)

Seventh. That on the 15th day of July, 1904, said Loeb and Schoenfeld Company subscribed for and took and became, ever since has been and now is, the owner and holder of fifty (50) preferred shares of said capital stock of said company of the aggregate par value of Five Thousand ($5,000.00) dollars; and that at Minneapolis, Minnesota, on the said 15th day of July, 1904, said Evans Johnson, Sloane Company duly issued and delivered said fifty shares to said Loeb and Schoenfeld Company, and then and there duly issued and delivered to said Loeb and Schoenfeld Company its stock certificate in the usual form, numbered 58, dated July 15th, 1904, and certifying that said Loeb and Schoenfeld Company is the owner of said fifty shares of the preferred stock of said

(Fol. 16.)

Evans, Johnson, Sloane Company. That said fifty shares were then and there, on the 15th day of July, 1904, duly entered and registered in the name of said Loeb and Schoenfeld Company on the books of said defendant, and that they have ever since remained and continued to stand, and now stand, on the books of said defendant in the name of said Loeb and Schoenfeld Company.

Said plaintiff and said receiver admit on information and belief that said Loeb and Schoenfeld Company is and during all the times herein, and in its complaint of intervention stated, has been a corporation, duly created and organized under the laws of the State

(Fol. 17.)

of New Jersey; and on information and belief said plaintiff and said receiver allege that the circumstances regarding the
271 issue to, and ownership by said Loeb and Schoenfeld Company of said fifty shares of stock, as aforesaid, are as follows: That some time prior to July 15th, 1904, said Loeb and Schoenfeld Company, in the regular course of its business, at the instance and request of said defendants, at Minneapolis, Minnesota, sold and delivered to said defendant goods and merchandise, the exact amount and value of which is not known to said plaintiff or to said receiver, but which were worth a sum largely in excess of $5,000.00, and that on the 15th day of July, 1904, said defendant, to secure payment of the sum of $5,000.00 then due for said goods, and merchandise sold and delivered, as aforesaid, executed and delivered to said Loeb and Schoenfeld Company defendant's promissory note for $5,-

(Fol. 18.)

000.00, and issued and delivered to said Loeb and Schoenfeld Company said fifty shares of stock as collateral security for the payment of said note and the said indebtedness represented thereby.

That said promissory note bears date of the 15th day of July, 1904, that it was made and executed in Minneapolis, Minnesota, that by the terms thereof said defendant, for value received, promised and agreed to pay to said Loeb and Schoenfeld Company the sum of $5,000.00 one year after date, with interest before and after maturity at the rate of eight per cent per annum, and is the same note set forth in the last eleven lines of the third folio of said complaint of intervention of said Loeb and Schoenfeld Company.

(Fol. 19.)

Said plaintiff and said receiver deny that the only payment made on said note and indebtedness is the sum of $506.00; and allege that there was paid on said note, on March 28th, 1906, the sum of $506.00 as alleged in said intervening complaint, and in addition thereto there was paid on said note and indebtedness on or about the 13th day of December, 1906, the further sum of $522.50.

That, except as hereinbefore set forth, said note and indebtedness represented thereby has not been paid. That said fifty shares so issued to and owned and held by said Loeb and Schoenfeld Company, have not, nor either or any of them, ever been transferred to said defendant, or cancelled; that more than $100,000.00 of
272 the aforesaid indebtedness of said defendant arose after said Loeb and Schoenfeld Company so acquired and became

(Fol. 20.)

the owner and holder of said fifty shares, and that said company, by virtue of its ownership as aforesaid of said fifty shares, agreed and became obligated to pay the said indebtedness of said defendant to the amount of $5,000.

Eighth. Said plaintiff and said receiver admit that said defendant, for value received, executed and delivered to said Loeb and Schoenfeld Company the note, dated at Minneapolis, Minnesota, February 27th, 1905, and described in the last four lines of folio 4, and the first seven lines of folio 5, of said intervening complaint; but deny that the only payment made thereon is $517.50; and allege that in addition to $517.50 there was paid on said note, on or about

(Fol. 21.)

the 13th day of December, 1906, the further sum of $522.50. Said plaintiff and receiver admit on information and belief that between the dates January 4th, 1905, and September 30th, 1905, at Minneapolis, Minnesota, said Loeb and Schoenfeld Company sold to defendant goods and merchandise, as alleged in folio 6 of said intervening complaint, but deny that defendant made any agreement as to the price to be paid therefor, and allege and state that they do not have sufficient knowledge or information thereof to form a belief as to the reasonable value of said goods and merchandise. They admit that there was paid for said goods, on March 28, 1906, the sum of $927.15, deny that that is the only payment which has been paid thereon, and allege that in addition thereto there was paid for said goods, on or about the 13th day of December, 1906, the further sum of $1,010.71.

(Fol. 22.)

Ninth. That all the foregoing facts regarding the capital stock of said defendant, its indebtedness and insolvency, the necessity for the order of assessment, the purpose of this action, and that said Loeb and Schoenfeld Company are the owners of said fifty shares and liable thereon, are set forth in the complaint in this action, to which said company has become a party. That due notice of said order of assessment was duly given to said Loeb and Schoenfeld Company on the 7th day of September, 1906, and
273 that by virtue of the premises and the constitution and laws of said State of Minnesota, said Loeb and Schoenfeld Company became, was and is liable to pay to said receiver for the benefit

(Fol. 23.)

of the creditors, in this action the sum of $5,000 and interest thereon at the rate of six per cent. per annum from and after October 4th, 1906, and that although due and duly demanded said Loeb and Schoenfeld Company has not paid same, or any part thereof.

Wherefore, said plaintiff and said receiver pray for the judgment of the court herein as follows:

1. That the court adjudge that said Loeb and Schoenfeld Company, as the owner of said fifty shares of stock, is liable to said receiver in this action for the sum of $5,000.00 and interest thereon, and that Charles E. Hamilton, as receiver of Evans, Johnson, Sloane Company, recover from said Loeb and Schoenfeld Company in this action the sum of $5,000.00 and interest thereon from October 4, 1906, together with the costs herein, and that said receiver have execution therefor.

(Fol. 24.)

2. That the court ascertain and determine the amount due said Loeb and Schoenfeld Company from said defendant upon the claims set forth in said complaint in intervention, and order and adjudge that no part thereof or dividend thereon be paid until the liability of said Loeb and Schoenfeld Company on said fifty shares of stock, and the judgment recovered in this action by said receiver therein, has been paid in full; and that said judgment be adjudged a first lien upon all moneys or dividends which shall become due said Loeb and Schoenfeld Company upon its claim against said defendant, as allowed hereon, and said receiver be authorized to apply the same, and all thereof, upon and towards payment of said liability of and judgment against said Loeb and Schoenfeld Company until the same is fully paid, with interest.

274 (Fol. 25.)

3. That the relief prayed for in said complaint of intervention be denied, and that said receiver and said plaintiff have such other, further or different relief as to the court may be deemed just and proper.

JAMES E. TRASK AND
E. H. MORPHY,
Attorneys for said Receiver and said Plaintiff.

(Duly verified.)

(Style of Cause.)

Reply to Answer of Receiver and Plaintiff.

Now comes the intervener, Loeb & Schoenfeld Company, and protesting that this court has no jurisdiction of its person or of the subject matter, so far as pertains to the enforcement of any stock liability against said intervener by virtue of the answer of Charles E. Hamilton, receiver, and the plaintiff Marshall Field & Company heretofore filed in said action, in response to the complaint in intervention of this intervener, and saving to itself all the rights accruing by virtue of its motion to strike out said answer and parts thereof heretofore made in this court, and duly excepting to the order of the court thereon, alleges:

It denies any knowledge or information sufficient to form a belief as to the amount of stock, either preferred or common, which has been issued or is now outstanding of Evans, Johnson, Sloane Company, defendant.

It denies each and every allegation of said answer contained in the 15th folio and the first seven lines of the 16th folio thereof.

It denies each and every allegation of the 17th folio, and the first four lines of the 18th folio, in said answer.

It denies each and every allegation contained in the last four lines of folio 19, and the first five lines of folio 20, of said answer, beginning with the words "That said fifty," to and including the words "to the amount of $5,000."

It denies each and all of the allegations contained in subdivision ninth of said answer.

WALTER L. CHAPIN,
Attorney for Loeb & Schoenfeld Company, Intervenors.

(Duly verified.)

275 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & CO., a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE CO., a Corporation, Defendant.

In re Claim of Loeb & Schoenfeld, Interveno-.

Findings.

This case came regularly before the Court on the issues raised by the complaint of the intervener and the answer thereto made by Charles E. Hamilton as receiver of said defendant. Walter L. Chapin appeared as attorney for said intervener, and James E. Trask and E. H. Morphy as attorneys for said receiver.

After hearing the evidence and the arguments of counsel, the Court finds as facts:

That on or about the 19th day of April, 1902, said defendant was duly organized and created as a corporation under the laws of the State of Minnesota under the name of Evans, Munzer, Pickering & Company; that on or about the 10th day of May, 1904, said name was by proper proceedings duly changed to Evans, Johnson, Sloane Company.

That defendant, ever since its organization, as aforesaid, has been a corporation duly organized and created under the laws of the State of Minnesota.

That on the 23rd day of October, 1905, upon proceedings duly had in the United States District Court for the District of Minnesota, said defendant was by said Court duly adjudged a bankrupt, and thereafter such further proceedings were duly had in said court that on the 24th day of February, 1906, said court entered its order and judgment duly discharging said bankrupt.

That plaintiff duly commenced the above entitled action to sequester the stock, property, things in action, assets and
276 effects of said defendant, to recover and enforce for the benefit of the creditors of said defendant, the superadded liability of its stockholders and for the appointment of a receiver therefor, and said action has since been prosecuted, all as alleged in the answer of said receiver. That judgment has been entered sequestering the stock, and property and choses in action and causes of action of said defendant and appointing a receiver, and that said receiver qualified and entered upon the discharge of his duties, all as alleged in said answer. That this court duly made its order requiring the creditors to present their claims and duly made its order levying an assessment upon the stock and against the stockholders of said defendant, all as alleged in said answer.

That all of the property and assets which said company had or acquired prior to the commencement of this action were taken possession of by the trustees duly appointed by order of said bankruptcy court in said bankruptcy proceedings and by them converted into money and distributed in said bankruptcy proceedings, and that the total amount so paid to creditors of said company in said bankruptcy proceedings is 20.45 cents on the dollar. That said defendant has not, since the commencement of said bankruptcy proceedings, acquired or had any property or assets whatever except said stockholders' liability.

That said intervener is and during all the times herein mentioned has been a corporation duly organized and created under the laws of the state of New Jersey.

That on the 15th day of July, 1904, defendant, for value received, made and delivered to said intervener its promissory note dated July 15, 1904, wherein and whereby it promised to pay to the order of said intervener the sum of $5000 one year after said date, with interest at the rate of eight per cent per annum until paid. That no part thereof has ever been paid except the sum of

$506 on the 28th day of March, 1906, and the further sum of $522.50 on the 13th day of December, 1906.

That on the 27th day of February, 1905, said defendant, for value received, executed and deliver to intervener its promissory note in writing, dated on that date, wherein and whereby it promised to pay intervener the sum of $5000 one year after said
277 date, with interest at the rate of six per cent per annum until paid. That no part thereof has ever been paid except the sum of $517.50 paid thereon March 28, 1906, and the further sum of $522.50 on the 13th day of December, 1906.

That between the 4th day of January, 1905, and the 30th day of December, 1905, said intervener sold and delivered to defendant goods, wares and merchandise for which said defendant agreed to pay the total sum of $9271.48, which sum the same were reasonably worth. That no part thereof has ever been paid except the sum of $927.15 paid on the 28th day of March, 1906, and the further sum of $1010.71 paid on the 13th day of December, 1906.

That on the 15th day of July, 1904, defendant issued and delivered to said intervener its certificate of fifty shares of stock of said defendant company as collateral security for the payment of the note first above mentioned.

That upon the issuance of said stock an entry was made in the stock book or certificate stub book of the defendant company by the person duly authorized to make such entries. That said entry was in words and figures as follows:

"Issued for Collateral Security for note of even date for $5000.00.

W. E. J.

Certificate.

No. 58.

For 50 Shares

Issued to

Loeb and Schoenfeld Co.

451 Broadway.

Dated July 15, 1904.

From whom transferred.

. . . . . ."

The words above underscored were entered in writing, and the balance thereof constituted the printed portion of said stub. That no other entry of the issuance of said stock was at any time made upon any of the books of the defendant company.

278 That a large amount of the indebtedness of said Evans, Johnson, Sloane Company which is still unpaid was incurred after July 15, 1904.

As conclusions of law the Court finds:

That the intervener is entitled to judgment that there is due and owing to it from said Evans, Johnson, Sloane Company the sum of $15,265.12, together with interest on the sum of $5000 at the rate of eight per cent per annum from July 15, 1904, to February 24, 1906, and interest on the sum of $5000 from February 27, 1905, to February 24, 1906, at six per cent per annum, and interest on the sum of $9271.48 at the rate of six per cent per annum from December 30, 1905, to February 24, 1906.

That said amount be adjudged a valid claim of said intervener herein, and that said intervener recover and receive herein said sum of or such ratable proportion thereof as shall be ordered from time to time by this court.

Dated November 29, 1907.

OSCAR HALLAM,
District Judge.

STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & Co., a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOANE Co., a Corporation, Defendant.

In re Claim of Loeb & Schoenfeld, Interveno-.

Order on Motion to Amend Findings as to Amount Due Intervener.

On application of the intervenor and on consent of the attorney for the receiver,

It Is Hereby Ordered that the findings of this Court herein be and the same are hereby amended so as to find that the
279 intervener is entitled to judgment, and that there is due and owing to it from Evans, Johnson, Sloane Company, the sum of Eighteen Thousand Nine hundred fifty-seven and 18/100 ($18,957.18) dollars, together with interest thereon at the rate of six (6%) per cent per annum from the 15th day of January, 1908, according to the schedule hereto attached and made a part of this order.

Dated February 7, 1908.

OSCAR HALLAM,
District Judge.

Re Loeb & Schoenfeld Co.

Claim		$19,271.46
Interest on $5,000, 8% from 15th July, 1904, date of note, to 16th April, 1906, date of first dividend....		701.11
Interest on $5,000, 6% from 27th February, 1905, to 16th April, 1906		340.83
Interest on $9,271.46, 6% from 30th September, 1905, to 16th April, 1906		302.85
Total		$20,616.25
Deduct	$506.00	
	517.30	
	927.15	
		1,950.45
		$18,665.80
Interest on $5,000, 8% from 16th April, 1906, to 13th December, 1906		263.33
Interest on $5,000, 6% from 16th April, 1906 to 13th December, 1906		197.50
Interest on $9,271.46, 6% from 16th April, 1906, to 13th December, 1906		366.21
		$19,492.84
Deduct	$522.50	
	522.50	
	1,010.71	
		2,054.71
		$17,438.13
Interest on $5,000, 8% from 13th December, 1906, to 15th January, 1908		435.55
Interest on $12,438.13, 6% from 13th December, 1906, to 15th January, 1908		1,083.50
Total		$18,957.18

280 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

MARSHALL FIELD & Co., a Corporation, Plaintiff,
vs.
EVANS, JOHNSON, SLOAN Co., a Corporation, Defendant.

In re Claim of Loeb & Schoenfeld, Interveno-.

Judgment and Decree Adjudging and Allowing Claim of Intervener.

This case came on to be heard before the above named Court at the General Term thereof, held at the Court House in the City of St.

Paul, County of Ramsey and State of Minnesota, on the 4th day of June, 1907, on the issue raised by the complaint of the intervener above named and the answer thereto made by Charles E. Hamilton, the receiver of the defendant appointed herein by said Court, and the reply of the intervener. Walter L. Chapin appearing as attorney for the intervener, and James E. Trask and E. H. Morphy appearing as attorneys for the plaintiff and the said receiver, Charles E. Hamilton.

After hearing the evidence adduced in the argument of counsel, the said Court made its findings of fact and conclusions of law:

Now, Therefore, it is hereby ordered, adjudged and decreed that the above named intervener recover of the above named defendant in this action, the sum of Eighteen Thousand Nine Hundred Fifty seven and 18-100 Dollars ($18,957.18), the same to be paid only pro rata with the allowed claims of the other creditors under the further order of the Court, out of the amounts which may be collected by the said receiver herein from the assets, if any, of the said defendant,

and from its stockholders upon their superadded liability,

281 after payment of the costs and expenses of collecting and distributing such funds, provided that if the said amounts, after payment of the costs and expenses, shall not be sufficient to pay the said claims of all the creditors herein in full, then the said claim of said intervener shall, under the further order of this Court, share pro rata with the other creditors in the fund and amounts so collected, after paying the costs and expenses of collecting the same and the costs of said action and of said receivership.

And it is further ordered, adjudged and decreed that said intervener herein recover and receive herein said sum so allowed it, or such ratable proportion thereof as shall be ordered from time to time by said Court.

Dated St. Paul, Minnesota, February 13, 1908.

MATT JENSEN,
District Clerk.
By G. A. JOHNSON, *Deputy.*

Form of decree approved.

OSCAR HALLAM,
District Judge.

Filed February 13, 1908.

282 And I, the said Matt Jensen, Clerk of said District Court, do hereby also certify that I have carefuly compared the foregoing paper writing, comprising a copy of the judgment roll, and copies of all orders, judgments, decrees, pleadings, petitions, notices, proofs of service, and all papers, records and files in said action, on file in my office, with the aforesaid originals thereof in my said office, and that the same is a true and correct copy and transcript of said original judgment roll and of said originals and records, and of the whole thereof, and of the whole of each and all thereof. And I do further certify that said District Court was and is a court of record, and that I am the officer in whose custody the files and records of said Court is required by law to be kept.

In witness whereof, I have hereunto set my hand and the seal of said District Court, at St. Paul, Ramsey County, State of Minnesota, on this 29th day of September A. D. 1910.

[Seal District Court, Ramsey Co., Minn.]

MATT JENSEN,
Clerk of this District Court in and for the County of Ramsey, State of Minnesota.

STATE OF MINNESOTA,
County of Ramsey, ss:

I, Hascall R. Brill, Presiding Judge of the District Court for the Second Judicial District in and for the County of Ramsey and State of Minnesota, the same being a Court of Record, do hereby certify that Matt Jensen, who makes the foregoing attestation, is and at the time said attestation was made was the Clerk of said District Court; that the foregoing attestation by Matt Jensen, as Clerk of said District Court, is by the proper officer and in due form as required by law; that I am acquainted with said Matt Jensen and with his hand writing, and that the signature attached to said attestation is genuine.

In testimony whereof, I have hereunto set my hand this 30th day of September, 1910.

HASCALL R. BRILL,
District Judge.

283 STATE OF MINNESOTA,
County of Ramsey, ss:

I, Matt Jensen, Clerk of the District Court for the Second Judicial District, in and for the County of Ramsey and State of Minnesota, do hereby certify that the Honorable Hascal R. Brill, who signed the foregoing certificate as the Judge of said Court, is the Presiding Judge of said District Court, duly commissioned and qualified, and was such Judge at the date of the foregoing certificate; that I am acquainted with said Judge and with his hand writing, and that the signature attached to said certificate is genuine.

In testimony whereof, I have hereunto set my hand and the seal of said District Court at St. Paul, in said Ramsey County, this 30th day of September, A. D. 1910.

[Seal District Court, Ramsey Co., Minn.]

MATT JENSEN,
Clerk of the District Court of Said Ramsey County.

284 PLAINTIFF'S EXHIBIT "2." Harvey L. Mills, Comm. Feb. 27, 1912.

Plaintiff's Ex. 7. Jan. 12, 1912. L. H.

APRIL 19, 1904.

Regular Meetings of directors held this day at 11.30 A. M., Pres. Evans in the Chair.

Present—Evans, J. F. & J. T. Elwell Alden & Johnson.

Moved by Elwell and Sec'd by Alden that Ed. Sloane be elected a director of this Co.

Carried.

The minutes of the last meeting were read and approved.

Referring to changing the name of the Co.

Mr. Evans stated that Messrs. Pickering & Munzer desired their names removed from the present Title and read a communication from Judge McGhee in reference thereto.

The reduction of the no. of directors from 7 to 5 was determined upon to take effect at the same time the name was changed.

Every director was in favor of the reduction to 5 directors.

Every director was in favor of changing the firm name to Evans, Johnson, Sloane Co.

Mr. Pickering's resignation as herewith was read and accepted.

New York, 486 Broadway.

Evans, Munzer, Pickering & Co.,
Incorporators,
615 to 629 Nicollet Avenue.

"The New Store."

MINNEAPOLIS, MINN., *Feb.* 8, 1904.

Messrs. Evans, Munzer & Pickering Co.

GENTLEMEN: I herewith resign as director in your com-
285 pany, resignation to take effect immediately.

Respectfully yours,

ADAM PICKERING.

The question of opening and closing hours was fully discussed but no action taken.

Moved to adjourn. Carried.

W. E. JOHNSON, *Sec'y.*

Approved Apr. 26, 1904.

286 PLAINTIFF'S EXHIBIT 8.

Plaintiff's Exhibit "2A." Harvey L. Mills, Comm. Feb. 27th, 1912.

Plaintiff'- Exhibit 8. Jan. 12, 1912. L. H.

MAY 10, 1904.

A special meeting of the Common Stockholders was held this day at 11 A. M. in the office of the Co. Pres. Evans in the chair.

Stockholders present in person were Evans, Sloane, Alden, Elwell, & Johnson by Proxy, Pickering & Munzer representing the entire common stock of the Co.

The Sec'y read the call date of Apr. 22nd, '04, and stated that each and every stockholder had been notified in writing by mail at their registered address with the legal time as stated in our articles of incorporation and that every stockholder had acknowledged the notice.

Upon motion the chair appointed Mr. Alden as Teller to pass on proxies and count the votes cast.

Upon reading the proposed amendments the Teller cast 1,490 shares of Common stock (of the 1,500) in favor of the amendments as read from the call and the Pres. declared the amendments adopted (each stockholder desired the Teller to cast his shares).

At 11.30 moved to adjourn. Carried.

W. E. JOHNSON, *Sec'y.*

Approved June 2nd, 1904.

287 PLAINTIFF'S EXHIBIT 9.

Pd.

Pl'ff'- Ex. No. 9.

Certificate.

No. 6.

For 50 Shares.

Issued to Arthur L. Selig,

S. Eisman and Co., 71 Grand St., New York.

Dated Apr. 23, 1902.

From Whom Transferred: —— ——.

Dated —— —, 190–.

No. original certificate.	No. original shares.	No. of shares transferred.
——	——	——

Received Certificate No. — for — Shares this — day of ——, 190–.

—— ——.

—— ——.

Written across the stub in green ink are the following words: "Cancelled & transferred Sept. 5, 1904."

288 Incorporated under the Laws of Minnesota.

Number 6 Minneapolis. Shares 50 Minnesota.

Evans, Munzer, Pickering & Company.

Capital Stock, $250,000.

Common, $150,000. Preferred, $100,000.

[CORPORATE SEAL.]

This certifies that Arthur L. Selig is the owner of Fifty Shares of the Preferred Capital Stock of the Evans, Munzer, Pickering & Company, transferable only on the books of the corporation, in person or by Attorney, on surrender of this certificate. This stock carries without voting powers, a fixed cumulative preferential dividend of eight per cent. per annum on the par value of said shares of the net earnings of the Company, and upon the liquidation or dissolution of said Corporation, shall be paid in full in preference to the common stock.

In witness whereof, the President and Secretary of said Company have hereunto subscribed their names and affixed the corporate Seal at Minneapolis, Minnesota, this 23rd day of April, A. D. 1902.

J. F. EVANS, *President.*

W. HAMBURG, *Secretary.*

Shares $100 Each.

289 For value received, — hereby sell, transfer and assign to —— —— the Shares of Stock within mentioned and hereby authorize —— —— to make the necessary transfer on the Books of the Corporation.

Witness, — hand and seal this — day of ——, 190–.

ARTHUR L. SELIG.

Witnessed by

—— ——.

NOTICE.—The signature of this assignment must correspond with the name as written upon the face of the certificate in every particular, without alteration or enlargement, or any change whatever.

290 DEFENDANT'S EXHIBIT A.

Certificate.

No. 62.

For 50 Shares.

Issued to Max Mayer, 140 West 83rd St., New York, N. Y.

Dated Sept. 5th, 1904.

From Whom Transferred: Arthur L. Selig.

Dated Apr. 23, 1902.

No. original certificate.	No. original shares.	No. of shares transferred.
6	50	50

Received Certificate No. — for — Shares this — day of ——, 190–.

—— ——.

—— ——.

291 *Assignment of Errors.*

District Court of the United States, Southern District of New York.

CHARLES E. HAMILTON, as Receiver of Evans, Johnson, Sloane Co., Defendant in Error,
against
ARTHUR L. SELIG, Plaintiff in Error.

Now comes the defendant and plaintiff in error by James, Schell & Elkus, his attorneys, and respectfully says that in the record and proceedings in the above entitled action there is manifest error in this, to-wit:

1. That the trial court erred in holding that the District Court of Minnesota had jurisdiction to determine as against the defendant any matter except the amount of the excess of the liabilities of the Evans, Johnson, Sloane Co. over its assets and the per cent of the assessment upon the entire amount of the shares of stock of said corporation that would be necessary to pay such excess.

2. That the trial court erred in holding that the District Court of Minnesota had jurisdiction to determine the liability of the defendant so as to bind the defendant in this action.

3. That the trial court erred in holding that the fact that defendant was once a stockholder of the Evans, Johnson, Sloane
292 Co., although not a stockholder within about two years of the beginning of insolvency proceedings, gave the said court jurisdiction without service upon defendant to adjudge defendant

liable for a numerical amount so as to bind defendant in this action.

4. That the trial court erred in holding that the District Court of Minnesota had jurisdiction to determine as against the defendant all matters establishing defendant's liability except the question of whether the defendant ever was at any period a stockholder of the Evans, Johnson, Sloane Co.

5. That the trial court erred in holding that the District Court of Minnesota had jurisdiction to determine as against the defendant and for the purpose of this action, the date on which the various claims arose which were allowed by said court against the Evans, Johnson, Sloane Co.

6. That the trial court erred in holding that the District Court of Minnesota had jurisdiction to determine as against the defendant for what debts, if any, and to what extent, the defendant was liable.

7. That the trial court erred in holding that the record of the proceedings in the District Court of Minnesota was admissible for any purpose other than to show the amount of excess of the liabilities of the Evans, Johnson, Sloane Co. over its assets and the per cent of assessment upon the entire amount of shares of stock of said corporation that would be necessary to pay such excess.

293 That the trial court erred in holding that the record of the proceedings in the District Court of Minnesota was admissible for any of the following purposes:

8. To prove that the defendant was liable for an assessment of one hundred per cent upon the par value of the stock once held by him.

9. To prove all matters material to establishing defendant's liability for the assessment except the question whether the defendant was ever at any period a stockholder of the Evans, Johnson, Sloane Co.

10. To prove the date upon which certain claims arose which were allowed against the Evans, Johnson, Sloane Co. in the proceedings in said Court of Minnesota.

11. To prove for what debts if any and to what extent if any the defendant was liable.

12. That the trial court erred in holding that the disposition made by it of the questions raised by each of the eleven foregoing assignments of error was in accord with the proper construction of the Constitution of the United States.

13. That the trial court erred in holding that by the law of Minnesota the order of assessment entered in the District Court of Minnesota on Sept. 4, 1906, adjudged the defendant liable as a stockholder for any amount.

294 14. That the trial court erred in holding that by the law of Minnesota the plaintiff may in this action show the defendant's liability for the assessment, in all respects except the question whether the defendant ever was a stockholder of the Evans, Johnson, Sloane Co., by offering in evidence the judgment roll of the proceedings in the District Court of Minnesota.

15. That the trial court erred in holding that by the law of

Minnesota the order of the District Court of Minnesota allowing claims against the Evans, Johnson, Sloane Co. and stating the date of accrual thereof, entered on April 23, 1907, bound and concluded the defendant or was evidence against him in this action as to the existence of and date of accrual of said claims.

16. That the trial court erred in holding that any actual or proper assessment against stock or parties liable as stockholders was made in the proceedings in the Minnesota Court.

17. That the trial court erred in holding that in the proceedings in the District Court of Minnesota any assessment was adjudged upon stock or against parties liable as stockholders that was or is applicable to the defendant or to the stock once held by the defendant.

18. That the trial court erred in holding that in the proceedings in the District Court of Minnesota any assessment was adjudged upon stock or against parties liable as stockholders that was
295 formed from any such proper basis with respect to the assets, debts, and shares of stock of the Evans, Johnson & Sloane Co. as to be applicable to the defendant.

19. That the trial court erred in holding that in the proceedings in the District Court of Minnesota there was any adjudication as to what debts of the Evans, Johnson, Sloane Co., if any, and to what extent the defendant was liable.

20. That the trial court erred in holding that there was sufficient proper evidence before the court to show that the defendant ever was a stockholder of the Evans, Johnson, Sloane Co.

21. That the trial court erred in holding that the assessment made by the District Court of Minnesota was not made upon such loose and irregular procedure and upon such absence of, and failure to ascertain any proper grounds for making an assessment that such assessment is not enforceable against defendant.

22. That the trial court erred in holding that this action was not barred by the Statute of Limitations in the State of New York and by the Statute of Limitations contained in Section 394 of the Code of Civil Procedure of the State of New York.

23. That the trial court erred in not dismissing the plaintiff's complaint and in rendering judgment for the plaintiff.

JAMES, SCHELL & ELKUS,
Attorneys for Defendant.

Office & Post Office Address, 70 1Broadway, Borough of Manhattan, New York City.

(Endorsed:) U. S. District Court, S. D. of N. Y., Filed Apr. 13, 1912.

296 *Stipulation Fixing Amount of Appeal Bond.*

District Court of the United States, Southern District of New York.

CHARLES E. HAMILTON, as Receiver of Evans, Johnson, Sloane Co.,
against
ARTHUR L. SELIG.

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the amount of appeal bond to be filed by the defendant to secure the judgment with interest and costs, on appal to the United States Supreme Court, shall be the sum of Seven Thousand, five hundred ($7,500.) Dollars.

Dated New York, April 12, 1912.

JOHN J. CLARK,
Attorney for Charles E. Hamilton, etc.
JAMES, SCHELL & ELKUS,
Attorneys for Arthur L. Selig.

(Endorsed:) U. S. District Court, S. D. of N. Y., Filed Apr. 13, 1912.

297 *Undertaking on Appeal.*

American Fidelity Company.

District Court of the United States, Southern District of New York.

CHARLES E. HAMILTON, as Receiver of Evans, Johnson, Sloane Co.,
Plaintiff,
against
ARTHUR L. SELIG, Defendant.

Know all men by these presents, that we, Arthur L. Selig of the City of New York, State of New York, as Principal, and the American Fidelity Company, a corporation organized and existing under and by virtue of the Laws of the State of Vermont, and having an office and usual place of business at No. 68 William Street, Borough of Manhattan, City of New York and State of New York, as Surety, are held and firmly bound unto Charles E. Hamilton, as Receiver of Evans, Johnson, Sloane Company in the sum of Seventy-five Hundred ($7500.00) Dollars, lawful money of the United States, to be paid to the said Charles E. Hamilton, as Receiver of Evans, Johnson, Sloane Company for the payment of which, well and truly to be made, the said Arthur L. Selig binds himself, his heirs, executors, and administrators and the said American Fidelity Company binds itself, its successors and assigns, jointly and severally firmly by these presents.

Sealed with our seals and dated this 12th day of April, 1912.

Whereas the above named Arthur L. Selig has prosecuted his Writ

of Error to the United States Supreme Court to reverse the judgment rendered in the above entitled action, by the Judge of the District Court of the United States, Southern District of New York, against said Defendant in the sum of Six Thousand Four Hundred Seventeen and 80/100 ($6417.80) Dollars, which judgment was entered herein on the Third day of April, 1912.

Now therefore, the condition of this obligation is such that if the above named Arthur L. Selig shall prosecute said Writ of Error to effect and answer all costs and damages if he fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and effect.

ARTHUR L. SELIG. [SEAL.]
AMERICAN FIDELITY COMPANY.
[SEAL.] By CARLISLE J. GLEASON,
Resident Vice-President.

Attest:
WILLIAM T. WHELAN,
Resident Secretary.

STATE OF NEW YORK,
County of New York, ss:

On this 12th day of April, 1912, before me personally came Arthur L. Selig to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

[SEAL.] BARNETT COHEN,
Notary Public N. Y. Co.

298 STATE OF NEW YORK,
County of New York, ss:

On this 12th day of April, 1912, before me personally came Carlisle J. Gleason to me known, who, being by me duly sworn, did depose and say that he resides in the City of New York and State of New York; that he is the Resident Vice-President of the American Fidelity Company of Montpelier, Vermont, the corporation described in and which executed the within instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation, and that he signed his name thereto by like order, and that the liabilities of said Company did not exceed its assets as ascertained in the manner provided by law.

And he further said that he was acquainted with William T. Whelan and knew him to be the Resident Secretary of said Company; and that the signature to the within instrument is the genuine handwriting of said Resident Secretary and was subscribed thereto by like order of the Board of Directors, in the presence of him, the said Resident Vice-President.

[SEAL.] W. W. ALLEN,
Commissioner of Deeds, City of New York.

Statement American Fidelity Company, Montpelier, Vermont, September 30, 1911.

Assets.

Bonds at market price, as follows:

$100,000	Baltimore City	$100,812.50
100,000	Boston City	98,175.00
50,000	Buffalo City	50,500.00
100,000	Chicago City	100,000.00
100,000	Cincinnati City	95,250.00
50,000	Cleveland City	50,625.00
50,000	Des Moines City	51,500.00
50,000	Hudson County, N. J.	49,000.00
100,000	Kansas City, Mo.	106,000.00
100,000	Massachusetts State	91,987.50
50,000	Milwaukee City	49,715.00
100,000	Minneapolis City	99,500.00
200,000	New York City	183,990.00
50,000	Philadelphia City	50,812.50
100,000	Pittsburgh City	103,750.00
100,000	St. Louis City	100,000.00
50,000	St. Paul City	51,187.50
50,000	Seattle City	50,500.00
$1,500,000		$1,483,305.00
	Due from Agents	489,456.27
	Accrued Interest	15,524.16
	Cash in Banks and Office	116,476.48
		$2,104,761.91

Liabilities.

Capital	$500,000.00
Legal Reserve	849,504.78
Loss Reserve	354,484.17
Commissions	156,626.03
Accrued Taxes	24,235.75
Estimated Unpaid Expenses	4,000.00
Surplus	215,911.18
	$2,104,761.91

STATE OF NEW YORK,
County of New York, ss:

I, William T. Whelan, Resident Secretary of the American Fidelity Company of Montpelier, Vermont, do hereby certify that the foregoing is a true statement of the assets and liabilities of said Company at the close of business September 30, 1911.

In testimony whereof, I hereunto set my hand and affix the seal of the Company, this 12th day of April, 1912.

WILLIAM T. WHELAN,
Resident Secretary.

Subscribed and sworn to before me this 12th day of April, 1912.

[SEAL.] W. W. ALLEN,
Commissioner of Deeds, City of New York.

299 *Certificate of Appointment of Abram I. Elkus and Carlisle J. Gleason as Resident Vice-Presidents, Elmer J. Hopper and William T. Whelan as Resident Secretaries and of Elmer J. Hopper, William T. Whelan and W. W. Allen as Attorneys-in-Fact March 5th*, 1912.

I, James W. Brock, President of the American Fidelity Company, a corporation organized under the laws of the State of Vermont and having its principal office in the City of Montpelier, Vermont, by virtue of the authority vested in me by the by-laws of said Company,

Hereby authorize and fully empower Abram I. Elkus and Carlisle J. Gleason of New York City, in the State of New York, or either of them, as Resident Vice-Presidents of the American Fidelity Company to sign, execute and deliver bonds, contracts, insurances and undertakings for or on behalf of said Company, which the Company under and by virtue of its charter has authority to execute, and to attach thereto the seal of the Company; said bonds, contracts, insurances and undertakings to be attested by Elmer J. Hopper of Paterson, in the State of New Jersey, or William T. Whelan of the said City of New York, who are hereby appointed Resident Secretaries of the Company for that purpose, and

I hereby authorize and fully empower Elmer J. Hopper of the City of Paterson, State of New Jersey, William T. Whelan of the City of New York, State of New York, W. W. Allen of the City of New York, State of New York, or either of them, as Attorneys-in-Fact of the American Fidelity Company, to sign, execute and deliver bonds, contracts, insurances and undertakings for or on behalf of said Company, which the Company under and by virtue of its charter has authority to execute, and to attach thereto the seal of the Company.

AMERICAN FIDELITY COMPANY,
By JAMES W. BROCK, *President.*

Certified Copy of the By-Laws of the Company Relating to the Duties of Resident Vice-Presidents and Attorneys.

"Resident Vice-Presidents and Attorneys, when authorized and empowered by the President for that purpose, shall have full authority to approve of and execute bonds, contracts, insurances and undertakings which the Company under and by virtue of its charter has authority to execute."

Certified Copy of the By-law of the Company Relating to the Duties of Resident Secretaries.

"Resident Secretaries, when authorized and empowered by the President for that purpose, shall have full authority to attest the execution of all bonds, contracts, insurances and undertakings which the Company under and by virtue of its charter has authority to execute."

I, H. W. Kemp, Secretary of the American Fidelity Company, hereby certify that I have compared the foregoing appointment and copy of the by-laws with the originals thereof as recorded in the Minute Book of said Company, and that they are correct and true transcripts therefrom and of the whole of said original appointment and of said by-laws.

Given under my hand and the seal of the Company, this 5th day of March 1912.

[Seal American Fidelity Company, Montpelier, Vt., Incorporated 1900.]

Attest:

H. W. KEMP, *Secretary.*

300 I hereby approve of the within Bond and of the sufficiency of the Surety therein.

JULIUS M. MAYER, *D. J.*

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Apr. 13, 1912.

301 District Court of the United States, Southern District of New York.

CHARLES E. HAMILTON, as Receiver of Evans, Johnson, Sloane Co., Defendant in Error,

against

ARTHUR L. SELIG, Plaintiff in Error.

UNITED STATES OF AMERICA, *ss:*

To Charles E. Hamilton, Receiver of the Evans, Johnson, Sloane Co., plaintiff in the above entitled action, Greeting:

You are hereby cited and admonished to appear at the Supreme Court of the United States, to be held in the City of Washington, in the District of Columbia, on the 14th day of October, 1912, pursuant to an order allowing a writ of error filed and entered in the Clerk's office of the District Court of the United States for the Southern District of New York from a final judgment rendered against the defendant herein, signed, filed and entered on the 3rd day of April, 1912, in a certain action at law wherein you are plaintiff and defendant in error and Arthur L. Selig is defendant

and plaintiff in error, to show cause, if any there be, why the said judgment rendered against the said plaintiff in error should
302 not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Learned Hand, United States District Judge for the Southern District of New York this 11th day of April 1912.

LEARNED HAND,
United States District Judge for Southern District of New York.

Service of the foregoing citation is hereby acknowledged this 12th day of April, 1912.

JOHN J. CLARK,
Attorney for Defendant in Error.

303 [Endorsed:] Law. 4/205. E. & A. D. 3372. L-4-205. United States District Court, Southern District of New York. Charles E. Hamilton, as Receiver of Evans, Johnson, Sloane Co., Defendant in error, against Arthur L. Selig, Plaintiff in error. Original. Citation. James, Schell & Elkus, Attorneys for Defendant, No. 170 Broadway, Borough of Manhattan, New York City. U. S. District Court, S. D. of N. Y. Filed Apr. 13, 1912, — M.

Endorsed on cover: File No. 23,390. S. New York D. C. U. S. Term No. 815. Arthur L. Selig, plaintiff in error, vs. Charles E. Hamilton, as receiver of Evans, Johnson, Sloane Co. Filed October 17th, 1912. File No. 23,390.

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In the Supreme Court of the United States,

October Term, 1913, No. 361.

Arthur L. Selig,
Plaintiff-in-Error,

against

Charles E. Hamilton, as Receiver of Evans, Johnson, Sloane Company, a corporation,
Defendant-in-Error.

BRIEF FOR PLAINTIFF-IN-ERROR.

Statement.

This case comes up on a writ of error (*fol. 7*) to review a judgment of the District Court of the United States for the Southern District of New York, for the sum of $6,417.80, entered for the plaintiff on April 3, 1912, at the direction of the court (*fols. 52-3*). The action was at law and tried by stipulation before the court and a jury of one (*fols. 41, 52*).

Writ of error to review the case in the Supreme Court is taken by virtue of the act of March 3, 1891, Ch. 517, Sec. 5, as re-enacted in the act of March 3, 1911, Sec. 238, which provides:

"Appeals and writs of error may be taken from

> the District Courts * * * direct to the Supreme Court in the following cases * * * in any case that involves the construction or application of the constitution of the United States; * * * and in any case in which the constitution or law of a state is claimed to be in contravention of the constitution of the United States."

The Pleadings.

The action is brought on an assessment made in insolvency proceedings in the District Court of Ramsey County, State of Minnesota, upon the capital stock of a domestic corporation. The defendant is a resident of New York and was not subject to the jurisdiction of the Minnesota court.

The complaint alleges that on April 19, 1902, the Evans, Munzer, Pickering Company, a corporation, was organized under the laws of Minnesota, and that on May 10, 1904, its name was changed to the Evans, Johnson, Sloane Company. That the capital stock was $250,000, consisting of 1500 shares of common and 100 shares of preferred stock, all outstanding (*fol. 11*).

That on September 25, 1905, an involuntary petition in bankruptcy was filed against the corporation. That adjudication followed on October 23, 1905, and that the company was discharged in bankruptcy on February 24, 1906. That the corporation is indebted to divers persons for goods sold and delivered, for sums aggregating $250,000, all of which was duly filed and allowed in bankruptcy proceedings. That in the bankruptcy proceedings dividends were paid amounting to 20.45 cents on the dollar (*fol. 12*).

That on May 28, 1906, Marshall, Field & Co., a creditor, commenced, in the District Court of Ramsey County, an action against the Evans, Johnson, Sloane Company on behalf of itself and all other cerditors, to sequestrate the property of the company and for the appointment of a receiver of said corporation to enforce the superadded

liability of stockholders by means of a ratable assessment adjudged and ordered under Chapter 272 of the Laws of Minnesota of 1899. That the Evans, Johnson, Sloane Company was served with process and appeared in said action (*fol. 13*).

That on June 25, 1906, an order was entered adjudging the corporation to be insolvent and appointing the plaintiff, Charles E. Hamilton, receiver of said corporation with full power and authority to take necessary steps to enforce payment of the superadded or constitutional liability of stockholders for its debts, by means of ratable assessments, and to bring action against any person or party liable as stockholders, whether in the State of Minnesota or elsewhere (*fol. 14*).

That on June 28, 1906, an order was entered requiring creditors to file their claims within six months from the first publication thereof, and that within the time limited claims were filed which were, by order and judgment entered April 23, 1907, duly allowed, aggregating $146,169.59 (*fol. 16*).

That the assets of the corporation were administered in the bankruptcy proceeding and that no assets have come into the hands of the receiver except the superadded or constitutional liability of stockholders of said corporation for its debts (*fol. 17*).

That at the time of the organization of the Evans, Johnson, Sloane Company, it was provided by the constitution and laws of the State of Minnesota that every stockholder of a corporation shall be liable for its indebtedness to an amount equal to the par value of the stock held or owned by each stockholder (*fol. 17*).

That on April 23, 1902, Arthur L. Selig, the defendant, subscribed and paid for and received the certificate for 50 shares of the preferred stock of said corporation. That on September 5, 1904, when the corporation was in an unsound financial condition, the defendant for the purpose of concealing his ownership of said 50 shares, made a pretended assignment thereof on the back of said

certificate, and the corporation then transferred on its books said 50 shares, to one Max Mayer. That Max Mayer was wholly without means of paying the liability on said stock and it was agreed between the defendant and Max Mayer that said Mayer should not thereby acquire any beneficial interest in said stock or any part thereof, and that the assignment and transfer are fraudulent and void (*fol. 19*).

That more than $40,000 of the indebtedness of the corporation was incurred prior to September 5, 1904, the date of said pretended assignment. That Section 2599 chapter 34 of the Laws of Minnesota, 1894, provide that a transfer of stock shall not in any way exempt the person making the same from liabilities of the corporation, created prior to such transfer (*fols. 18-20*).

The complaint then sets out verbatim Sections 1 to 15 inclusive of Chapter 272 of the Laws of Minnesota for 1899, relating to liability of stockholders and procedure for the enforcement thereof, and alleges that Chapter 272 of the General Laws of Minnesota for the year 1899 was substantially re-enacted by Sections 3122 to 3190 of Chapter 58, revised laws of Minnesota of April 18, 1905, in effect March 1, 1906 (*fols. 21-3*).

That under the constitution and laws of the United States the decree of assessment and the decree appointing plaintiff as receiver of said corporation, and the statutes and proceedings in Minnesota upon which the same are based, are entitled to be given in every other state the same credit and effect which they have in Minnesota; that the Supreme Court of Minnesota and the Supreme Court of the United States have determined that Chapter 272 General Laws of 1899 is constitutional and not in violation of any provisions of the constitution of the United States or of the constitution of Minnesota; that by acquiring jurisdiction over the corporation in proceedings under said act the Minnesota court thus acquires jurisdiction over absent and non-resident stockholders, so far as it is necessary for the determina-

tion of all questions specified in Section 3 of said act; that the determination or judgment of the court ordering such assessment and appointing a receiver is conclusive and binding upon stockholders who are not before the court otherwise, than by virtue of their membership in the corporation; that due process of law is not denied a stockholder in a Minnesota corporation by said act, because stockholders need not be served with process in the action in which the assessment is ordered (*fol. 24*).

That on July 6, 1906, the plaintiff filed, as receiver, his petition for an assessment, and on the same day an order was entered providing for a hearing on said petition on September 1, 1906. That due notice of said hearing was given to all stockholders by publication and mailing. That on September 4, 1906, said hearing duly came on and an order was entered assessing $100 "upon and against each and every share of said capital stock and upon and against the persons or parties liable as stockholders of said defendant" (*fols. 25-6*). That due notice of said assessment was given to the defendant. That by reason of the premises the defendant became liable to pay plaintiff $5,000 with interest from October 4, 1906, and in consideration thereof promised to pay plaintiff said sum at his request (*fol. 27*).

That the defendant Arthur L. Selig is a co-partner with Samuel Eisman and Samuel L. Ferber, of the firm of Samuel Eisman & Co., and that said firm filed a claim for goods sold, against Evans, Johnson, Sloane Company, in the insolvency proceedings in the District Court of Minnesota, Ramsey County, which was allowed, for $4860.69 (*fol. 28*).

The complaint then sets out the statutes of Minnesota providing for incorporations and the filing and publishing of articles of incorporation and amendments thereof (*fols. 26-32*), and alleges that the Evans, Johnson, Sloane Co. was duly incorporated (*fol. 33*).

The complaint demands judgment for $5,000 with interest from October 4, 1907 (*fol. 34*).

The Answer.

The answer admits that defendant became the owner of 50 shares of preferred stock on April 23, 1902, and that on September 5, 1904, he transferred the same to Max Mayer, and that the transfer was duly made and entered on the books of the corporation. It denies all the other allegations of the complaint.

Statement of Facts.

On April 19, 1902, the Evans, Munzer, Pickering Company was incorporated under the laws of Minnesota (*fols. 91, 99*). About May 10, 1904, the name of the corporation was changed to the Evans, Johnson, Sloane Company (*fol. 100*). The stock certificates were never changed from the original name (*fol. 288*).

The capital stock of the corporation consisted of 1500 shares of common and 100 shares of preferred stock, of the par value of $100 (*fol. 98*). The preferred stock was entitled to cumulative dividends at 8% and no more, and carried no voting power (*fol. 95*).

The Charter provided:

> "The corporation shall not be at liberty * * * to create any charge other than current liabilities, except as herein provided, upon the net profits of the corporation, which shall not be subordinate to the preference shares" (*fol. 96*).

Article IV provided:

> "The highest amount of indebtedness or liability to which said corporation shall at any time be subject shall be $250,000" (*fol. 96*).

Plaintiff in error subscribed for 50 shares of preferred stock and duly paid for the same, and certificate No. 6 for 50 shares of preferred stock was duly issued to him on April 23, 1902 (*Pltff's Ex. 9; fols. 287-8*).

Before September 5, 1904, defendant endorsed in blank the transfer on his certificate, and on September 5, 1904, the certificate (No. 6) was returned to the company and re-pasted into the stock certificate book and attached to the stub from which it had originally been taken. Across the stub was then written in ink, "Cancelled and transferred, September 5, 1904" (*fols. 287-8*).

On September 5, 1904, a new certificate for the 50 shares cancelled, was issued to Max Mayer, 140 West 83rd Street, New York City. The new certificate was No. 62. The stub was dated September 5, 1904, and recited, "Transferred from Arthur L. Selig, No. original certificate, 6, No. original shares, 50, No. shares transferred, 50" (*fols. 290-1*).

Matters Asserted in the Records of the Minnesota Proceedings.

On September 25, 1905, a petition in bankruptcy was filed against the company. Adjudication followed on October 13, 1905. An order of discharge was entered February 24, 1906 (*fols. 125-6, 117*). Trustees in bankruptcy took possession of the assets of the corporation and had not converted all the assets into cash when the insolvency proceedings were begun (*fol. 125*). When insolvency proceedings were commenced a final dividend had not been paid (*fol. 126*).

Complaint in Parent Suit and Service thereof.

On June 25, 1906, an alleged creditor filed the complaint in the parent suit against the Evans, Johnson, Sloane Company (*fol. 124*). The affidavit of service states that this complaint was served on W. E. Johnson, the secretary of the company, but there is no evidence that the company was in existence at that time, or that said Johnson was then its secretary (*fol. 123*).

There was no attempt to serve stockholders with this complaint or to give them notice of the suit by publication or otherwise.

Certain attorneys in Minneapolis filed an appearance for the corporation, although no authority to appear is shown, and apparently this was a matter of form only. The affidavit of default in answer states that there was no appearance (*fols. 135, 136*). This complaint alleges that the indebtedness exceeds $250,000; that all the capital stock was outstanding; that certain parties, including Selig, were prior to May, 1904, and still are stockholders; that certain parties, including Selig, had made pretended transfers of their stock, Selig having transferred his stock to Max Mayer (*fols. 126-8*).

That the owners of stock of the par value of $137,700, "are not subject to the jurisdiction of this court and can not, by summons or process, be brought within the jurisdiction of this court, except the jurisdiction which this court, upon proper order and notice, acquires over all such stockholders to adjudge and order a ratable assessment upon all stockholders and all the stock of said defendant, and against all parties liable thereon, and to direct enforcement of the payment of such assessment by action against said stockholders, whether resident or non-resident, and in whatever state or jurisdiction they may be found" (*fol. 130*).

The relief asked for is that the court "appoint with the usual powers and directions, a receiver of * * * the right and causes of action to recover upon and enforce for the benefit of the creditors of said defendant the superadded liability of its stockholders by means of a ratable assessment levied by the court herein against all the stock of said defendant and upon all persons liable thereon as stockholders" (*fol. 132*), and that "upon notice to persons liable as stockholders and all stockholders, the court compute the probable amount of indebtedness and expenses, what parties *may* be liable as stockholders, the nature and amount of their liability, and make an order levying a ratable assessment upon the

parties liable as stockholders or on account of stock" (*fol. 133*).

Appointment of Receiver.

Then a notice of motion and affidavit for the appointment of a receiver was served upon the attorneys who had filed an appearance for the corporation.

The affidavit, by one of the attorneys for the plaintiff in said action, stated that the entire indebtedness exceeded $250,000, that not more than 25% would be paid in the bankruptcy proceedings and that after deducting dividends paid and to be paid the indebtedness amounted to $200,000 or more (*fol. 141*); and that it was necessary to give creditors six months in which to file claims, and asked that a receiver be immediately appointed to take the necessary proceedings to enforce the liability of the stockholders of defendant (*fols. 139-142*).

No notice of this motion was given to stockholders. On the return of this motion on June 23, 1906, an order was made which recited, among other matters, that the indebtedness of defendant exceeded $250,000, and that the corporation had no assets, and appointed Charles E. Hamilton receiver, with full power to collect and maintain actions to enforce payment of liability of stockholders; and authorized him to take necessary steps to enforce payment of the superadded liability of stockholders "by means of a ratable assessment to be ordered by the court upon all the parties liable as stockholders, for such percentage of such liability on account of each share of such stock as the court upon application of said receiver, and upon due notice stating the time and place of hearing, may hereafter determine by its order herein, which order of assessment shall direct payment of the amount so assessed aaginst each share of such stock to said receiver * * *" (*fols. 144-5*).

The attorneys who filed notice of appearance for the

corporation appeared at this motion and consented to the order (*fol. 144*).

The receiver filed his bond, but no approval of such bond was made or filed at that time, and three years later, on July 9, 1909, an order was made, though apparently not filed, approving said bond *nunc pro tunc* (*fol. 150*).

Order Limiting Time Within Which Creditors Could File Claims.

The next step in the proceeding was when the court, apparently of its own motion (*fol. 151*) made and filed an order on June 28, 1906, requiring that all creditors should, within six months from the date of the first publication of said orders, become parties and file their claims with the Clerk and deliver a copy thereof to the attorneys for the plaintiff. It also provided for the filing of objections to any claim by any party, and for the trial of said objections at a term of court beginning April 1, 1907, and provided that said order be published once each week for three weeks in a newspaper of Ramsey County (*fols. 151-2*).

It appears by affidavit filed September 4, 1906, that copies of said order were mailed to a list of creditors, stated to be those known to the attorneys of the plaintiff and of the receiver, and those known to the receiver (*fol. 153*).

It appears from an affidavit filed August 29, 1906, that said order limiting the time to file claims was published first on July 2, 1906. Thus the time to file claims was limited to January 2, 1907 (*fol. 158*).

There was no attempt to give stockholders any kind of notice of obtaining this order.

Petition and Order for Assessment.

Without waiting for the claims of creditors to be filed, the receiver, on July 6, 1906, filed a petition for an assessment (*fols. 171, 161*).

The petition for assessment follows largely the complaint and the petition for appointment of receiver. It alleges the bringing of the action to enforce a liability of stockholders by means of a ratable assessment "upon all the capital stock of said defendant and upon all the parties liable as stockholders" (*fol. 161*); the appointment of a receiver, the organization of the corporation, the proceedings in bankruptcy not yet concluded (*fol. 162-3*); that the indebtedness exceeded $250,000 and that the corporation was without assets; that certain parties, including Arthur L. Selig, were stockholders from about May, 1904, to date, and that certain parties, including Arthur L. Selig, made pretended transfers to certain parties—Arthur L. Selig transferring his stock to Max Mayer (*fols. 165-6*).

That the owners of stock in the amount of $137,700 reside without the state, and "are not subject to the jurisdiction of this court and can not, by summons or process, be brought within the jurisdiction of this court, except the jurisdiction which this court, upon proper order and notice, acquires over all such stockholders to adjudge and order a ratable assessment upon all stockholders and upon all the stock of said defendant and against all parties liable thereon" (*fol. 168*). It asks that the court determine the probable amount of indebtedness and expenses, the probable amount that may be collected from stockholders, and make an assessment, "upon each share of said stock and against each of said stockholders and persons liable on said stock," and that the court set a time for a hearing on the petition and direct such notice as may seem proper (*fol. 170*). Thus the petition for assessment was not made upon the basis of claims filed and proved against the corporation. The receiver did not wait until a period should elapse during which claims might be filed, but proceeded at once for an assessment on his own affidavit, alleging generally that the indebtedness amounted to over $250,000 (*fol. 164*).

ORDER OF ASSESSMENT.

On the petition of the receiver for an assessment the court made an order on July 6, 1906, that the petition be heard on September 1, 1906; that the receiver give notice of such hearing by causing a copy of this order to be published once each week for three successive weeks in a named paper published in Ramsey County, and "by causing a copy of said order to be mailed to each of the stockholders and creditors of said defendant corporation whose post office address is known to said receiver or his attorneys, at least thirty days prior to the date of said hearing" (*fol. 172*). The affidavit of mailing of said order and notice of hearing of the petition for an assessment, states that a copy of the same was mailed to both Arthur L. Selig and Max Mayer, his transferee (*fol. 173-6*). There was no common law proof that this notice was mailed to plaintiff in error. An affidavit was also filed on July 21, 1906, stating that the order was published as therein provided (*fol. 177*).

On September 6, 1906, the hearing on the petition came on. The attorneys for the receiver appeared, and also the attorneys for a stockholder who had filed an answer setting up a discharge in bankruptcy wherein this liability was listed. There were no other appearances (*fol. 179, 136*).

There was no evidence presented other than the papers on file. An order of assessment was entered, the material parts of which are as follows:

> "It is ordered that an assessment equal to the par value of each share of the capital stock of said defendant, to wit: the sum of $100 on each and every share of the capital stock of said defendant, be, and the same is hereby, assessed upon and against each and every share of said capital stock and upon and against the persons or parties liable as stockholders of said defendant, for, upon or on account of such shares of stock; * * *
>
> "Ordered further, that * * * said re-

ceiver is hereby authorized and directed forthwith to prosecute such action * * * against such person or persons, party or parties liable in any court having jurisdiction, whether in the State of Minnesota or elsewhere, which said receiver may deem necessary."

It was ordered further that the receiver give notice of this order by mailing a copy to each stockholder whose name and address is known to him or to his attorneys (*fol. 179-80*).

This order of assessment was filed on September 6, 1906. The affidavit of mailing within five days a copy thereof to the stockholders, and giving a list of the stockholders, was sworn to on March 5, 1908, and was filed on March 13, 1908.

Extension of Time to File Claims by Order, without Notice to Stockholders.

The six months period limited for creditors to file claims expired January 2, 1907 (*fol. 158*), and the time set for the trial of the issue as to claims was Monday, April 1, 1907 (*fol. 152*).

On January 5, 1907, after the time for filing claims had expired, the attorneys for the plaintiff made a motion to extend the time for filing claims to February 16, 1907 (*fols. 188-9*). This motion was made on notice to certain stockholders who had already filed claims and on the attorneys who pretended to appear for the corporation, but without any attempt at notice to the stockholders (*fol. 191*). The reason given in an affidavit of one of the attorneys for the plaintiff for extending the time was that only claims to the amount of $85,000 had been filed (*fol. 190*). On January 8, 1907, an order was entered extending the time for creditors to file claims to February 16, 1907 (*fol. 195*).

Trial of Action and Allowance of Claims.

The hearing of the action itself upon the claims filed and the amount thereof, and the amount of indebtedness, and hence upon the necessity and the extent of an assessment, came on on April 11, 1907 (*fol. 197*). This was about seven months after the order of assessment had been entered, on September 6, 1906.

The attorneys for the plaintiff made appearance for themselves and all other creditors, except Loeb & Schoenfeld, creditors, against whose claim objections had been filed and who appeared by separate attorneys (*fol. 197*). The proceeding was continued as to the claim of Loeb & Schoenfeld.

There was no appearance for the corporation. The claims filed were taken as admitted without further proof. There were no findings separately numbered or filed as such. The order for judgment made April 20, 1907, recites as follows:

> "And it appearing from the files in this action and from the testimony offered and received upon said hearing, and the court hereby finding that the persons, corporations and co-partnerships whose names are set forth in the 'schedule of claims,' hereto attached and made a part hereof, are creditors of said defendant that, with the exception of Loeb & Schoenfeld, they are the only creditors and all the creditors who have joined in said action and filed their claims herein; that the amount for which each of said claims were filed, when each of said claims arose, and the nature thereof is correctly set forth in said schedule of claims under column headed 'Nature of Claim. Amount. When it Arose'; that each of said creditors is entitled to be allowed herein the amount for which his claim was filed," except dividends received from bankruptcy proceedings are to be subtracted; "that the amount to which each claim is entitled to be allowed as hereby adjusted, is correctly set forth

in said schedule of claims opposite the name of each creditor under column headed 'Amount of Claim Allowed Exclusive of Interest'; that the amount of interest on each claim to the date hereof is correctly set forth in said schedule of claims under column headed 'Amount of Interest on Each Claim'; and that the amount of each of said claims set forth in said schedule, with interest to the date hereof, as hereby determined and adjusted, is correctly set forth opposite the name of each creditor in said schedule, under column headed 'Amount of Claim Including Interest.'

"Now, on motion of * * * attorneys for said plaintiff, it is hereby determined and ordered that the creditors named in said schedule of claims are entitled to recover * * * each the respective amounts set opposite their respective names in said schedule of claims under column headed 'Amount of Claim, Including Interest,' and to have judgment therefor. * * * That said claim of plaintiff, together with said claims set forth in said schedule of claims as hereby determined and allowed, and amounting to $146,169.51, are entitled to be paid in full with interest from the date hereof" (*fols. 199-200*).

This so-called order for judgment was filed April 23, 1907. The decree itself was filed the same day (*fol. 218*).

The decree follows the order for judgment verbatim, except a slight change as follows:

"And the court having made and filed its findings and order for judgment herein, finding and determining that the persons, co-partnerships and corporations whose names are set forth in the 'schedule of claims' hereto annexed and made a part of this judgment are creditors of said defendants; that, with the exception of said Loeb & Schoenfeld they are the only creditors and all the creditors who have joined in said action and filed their claims herein: that the amount for which each of said claims were filed, when each of said claims arose, and the nature thereof is correctly set forth in said schedule of claims under

column headed 'Nature of Claim. Amount. When it Arose'; * * *

"Now, therefore, on motion of * * *, attorneys for plaintiff, it is hereby adjudged and decreed that the creditors named in said schedule of claims recover of said defendant in this action, upon their respective claims, each the respective amounts set opposite their respective names in said schedule of claims under the column headed 'Amount of Claim, Including Interest'; * * * that said judgment in favor of said plaintiff upon its said claim, together with the said judgments in favor of said creditors respectively upon their said several claims set forth in said schedule of claims, amounting in the aggregate to $146,169.51, are entitled to be paid in full."

TRIAL AND METHOD OF PROOF.

On the trial on January 12, 1912, the plaintiff offered evidence tending to show the incorporation, the change of name, the adjudication in bankruptcy, and that defendant became a stockholder on April 23, 1902 (*Plaintiff's Ex. 9, fol. 287*), and offered the record of the proceedings in Minnesota.

The defendant showed by the stock book of the corporation that his certificate was canceled on September 5, 1904, and a new certificate for the same shares was on that day issued to Max Mayer (*Deft's Ex. A, fol. 290*).

Both parties moved for a directed verdict. The court directed verdict for the plaintiff. The court recognized that defendant was liable only ratably for debts that arose prior to September 5, 1904, but considered that under *Bernheimer* vs. *Converse, 206 U. S., 516*, the Minnesota court had jurisdiction to determine the personal elements of liability of a past stockholder, and that the assessment was made against the defendant personally (*fols. 41-6*). The court recognized that defendant was liable only for debts arising before September 5, 1904, and only on an assessment made on the basis of the

same (*fol. 46, page 30; fol. 50, page 32*), but argued *ab convenienti* that the Minnesota court intended to assess defendant because otherwise this decree might not be enforceable against defendant (*fols. 47-50*).

The court did not determine how defendant became liable on an assessment made on a basis wholly different from that of his liability, and did not determine whether the Minnesota court found that debts existed which arose prior to September 5, 1904, or that the transfer was not a real one, thus apparently recognizing that the Minnesota court found or adjudged neither of these matters.

ASSIGNMENTS OF ERROR.

1. Plaintiff in error contends that the Minnesota court did not acquire and did not have jurisdiction to determine defendant's liability, and the elements thereof, or

(1) Whether the transfer of defendant's stock was real or only pretended, or

(2) Whether any of the debts arose prior to September 5, 1904, the date of the transfer of defendant's stock.

2. That defendant is bound by the order of assessment only to the extent that it is an assessment against capital stock and not against him personally.

3. That the Minnesota court did not acquire and did not have jurisdiction to adjuge against defendant by its decree of April 23, 1907, that any of the debts arose prior to September 5, 1904.

4. That the extent of the jurisdiction acquired and had by the Minnesota court is determined by the intent to exercise the same, by the statutes of Minnesota, and by the full faith and credit clause (Art. IV, Sec. 1) and the due process of law clause (Art. XIV, Sec. 1) of the Federal constitution.

5. That the order of assessment purports to be against stock only, leaving the elements of personal liability to be determined later.

6. That the Minnesota court did not find or adjudge that the transfer of defendant's stock was not a real one, or that any debts arose prior to September 5, 1904, the date of the transfer.

7. That the Minnesota court made no assessment on any basis of debts arising before September 5, 1904, for which defendant is ratably liable.

8. That the assessment is against Max Mayer, defendant's transferee.

9. That the defendant is not bound by any findings of the Minnesota court, but only by what it adjudged.

10. That the Minnesota court made no assessment against stock or parties liable, which is applicable to defendant or for which defendant is liable.

11. That the Minnesota court made no adjudication as to what debts, if any, and to what extent, defendant is liable.

12. That the action was barred by the Statute of Limitations contained in Sec. 394 of the New York Code of Civil Procedure.

POINTS.

I.

Right to review in the Supreme Court.

Converse vs. *Hamilton, 224 U. S., 242, 252.*
Bernheimer vs. *Converse, 206 U. S., 514.*
Old Wayne Mut. L. Asso. vs. *McDonough, 204 U. S., 7.*

An application of the full faith and credit clause of the Federal Constitution (Art. IV, Sec. 1), was necessary in determining whether the order of assessment by the court in Minnesota could have the force when sued on in New York, of concluding the defendant upon the question of his liability and the personal elements of his liability.

After the lower court had held that the order of assessment bound defendant as to the elements of his liability, the question was involved whether such determination was due process of law under the Federal Constitution (Art. XIV, Sec. 1). The complaint set up that by the Federal Constitution under both the full faith and credit clause and the due process of law clause, the order of assessment bound the defendant in point of liability (*fol. 24*). This was denied in the answer (*fol. 36*). Defendant objected to the admission in evidence of the record of the Minnesota proceedings both as a whole and to the various orders and papers contained therein, on the ground that he was not bound thereby and that the court did not have jurisdiction (*fols. 60-3*). On the motion to dismiss the complaint and to direct a verdict for the defendant, these issues were brought before the court (*fol. 88*), and the court considered them in its opinion (*fols. 45, 51*).

The petition for writ of error is framed on this basis

(*fol. 4*). The assignment of errors includes these issues and the jurisdiction of the Minnesota court (*fols. 292-3*).

The writ of error brings up the entire case for review.

II.

The order of assessment does not purport to decide defendant's liability, but only the amount of probable debts and assets and the extent to which it was necessary on a basis of all debts to resort to the liability of stockholders.

The order says:

> "Assessed upon and against each and every share of said capital stock and upon and against the persons or parties liable as stockholders of said defendant for, upon or on account of such shares of stock" (*fol. 180*).

This order was entered entirely without findings (*fol. 180*). It is perfectly impersonal so far as to who is liable. No reference is made to a stockholder who answered the complaint, setting up a discharge in bankruptcy in which this liability was scheduled (*fols. 136-8*). The same court later held Loeb & Schoenfeld to be not liable on the stock issued to them (*fol. 277*).

The order was entered upon the petition of the receiver, who could not assume to have personal knowledge as to whether persons who had transferred stock had made real or pretended transfers (*fol. 170*). There is no room for an argument that this order adjudged that the transfer made by defendant on September 5, 1904, was not a real one.

Certainly this order does not determine against the defendant that any debts arose prior to September 5, 1904, when defendant transferred his stock. It was entered on September 6, 1906 (*fol. 181*). The decree allow-

ing claims by default was not entered until April 23, 1907 (*fol. 218*). When the order of assessment was entered very few claims had been filed, and no hearings had been held thereon (*fol. 222*). There was nothing in the receiver's petition alleging when any claims arose. There was nothing then before the Court from which it could find that any of said claims arose before September 5, 1904.

By the law of Minnesota defendant was not a person liable as a stockholder in the ordinary sense. His transferee alone was liable upon assessment against these 50 shares on a basis of all debts; and if such assessment could not be collected from his transferee the defendant could be held secondarily liable ratably on an assessment of a basis of debts that had accrued prior to his transfer and had not been renewed, and which were still unpaid. He could be held only ratably on an assessment for debts which had accrued prior to September 5, 1904, and have not been renewed or paid, and for this he could be held only if and to the extent that the original assessment could not be collected from his transferee.

The assessment was made up on a basis of all the debts and all the stock. No special matters concerning the liability of any person were adjudged or considered.

The claims as filed naturally set out the original transactions. In the brief for the plaintiff in the court below, six claims amounting to $11,839.84 were set out, which, according to the claims as filed, arose wholly prior to September 5, 1904, but the claims, of course, do not state what renewals thereof had been made. It is probably a fact that the plaintiff could not prove that any claim arose prior to September 5, 1904, and still remains unrenewed. The corporation continued for a year as a going concern after defendant transferred his stock, that is, from September 5, 1904, to September 25, 1905. In all events it is apparent that any assessment based on debts for which defendant may be liable would be very different from the assessment sued on.

The statute in force when defendant transferred his stock was Chapter 272, Laws of 1899. The language of the order of assessment is that of Sec. 3 of the statute, and hence not more specific than the statute itself. Sec. 5 of the statute says that the order shall be conclusive "as to all matters relating to the amount of and propriety of and the necessity for the said assessment"; that is, conclusive as to the assessment on the stock but not on the point of liability therefor.

III.

The decree allowing the claims filed did not adjudge when they accrued. Stockholders are not bound by this decree.

On April 23, 1907, the decree was entered in the parent suit on the hearing on the claims filed (*fol. 218*). There are no findings except certain recitations appearing in the decree and in the order for judgment (*fols. 217, 199*). These recitations are substantially identical and are as follows:

> "And the court having made and filed its findings and order for a judgment herein, finding and determining that the persons * * * whose names are set forth in the 'Schedule of Claims' hereto attached and made a part of this judgment are creditors of said defendant; * * * that the amount for which each of said claims were filed, when each of said claims arose, and the nature thereof is correctly set forth in said schedule of claims under column headed 'Nature of Claim. Amount. When it Arose'" (*fol. 217*).

This is not a finding of when each claim arose, but that the schedule correctly corresponds with the claims and allegations as filed. This view is confirmed by the fact

that the decree goes on to allow and adjust specifically each amount of principal and each amount of interest, and each amount of principal and interest. But there is no finding when each claim arose, except that the schedule sets it forth as filed.

The decree then adjudges that each creditor recover the amount set opposite his name in column marked "Including Interest" (*fol. 218*). The entire claims aggregate $146,169.51. There is no adjudication of when a claim arose.

Even if there were a finding of when a claim arose, a stockholder would not be bound by a finding but only by what was adjudged.

Moreover, the defendant was not a party to the action. It was necessary to give him notice by publication and mailing. There is no claim that the defendant or any stockholder was given notice of this hearing on the claims filed. In fact, the whole scheme of the suit is that after the order of assessment, seven months previous, which was due and payable October 4, 1906, the stockholder was in no wise concerned in the suit.

IV.

The sole determination is that an assessment on a basis of all debts of such a percentage on the capital stock will not more than pay the corporate debts. No other question was considered by the Court in making the order of assessment.

Straw, etc., Mfg. Co. vs. *Kilbourne, 80 Minn., 125.*
Bernheimer vs. *Converse, 206 U. S., 516, 528.*
Tiffany vs. *Giesen, 96 Minn., 488.*
Swing vs. *Humbird, 94 Minn., 1.*
Hamilton vs. *Loeb, 186 Fed., 7.*

In *Straw, etc., Mfg. Co.* vs. *Kilbourne Co., 80 Minn., 125.* The suit was under Ch. 272, Laws 1899, certain stockholders appealed from an order of assessment and contended that the statute was unconstitutional because it attempted to conclude a stockholder without personal service and even without notice and whether resident or non-resident.

The order there appealed from was practically indentical with that now in question.

After stating the order COLLINS, *J., page 131,* says:

> "It will be noted that the trial Court construed the act as authorizing it to assess a certain sum against each and every share of stock, and upon each and every person liable as a stockholder, the latter being directed to pay the sum stated on account of each share so held to the receiver within thirty days from the date of the order. The Court made no attempt to determine who were stockholders, or the number of shares held by any particular person, or the amount of liability which had been incurred by any individual. It did ascertain under Section 3 the probable indebtedness of the insolvent and expenses of the receivership, and the probable value of the assets available in payment; and also what parties were or might be liable as shareholders, and the nature and extent of this supposed liability.
>
> From this examination of the condition of the corporate affairs—which at most, must be merely tentative on all the questions investigated—the Court directed and levied the assessment mentioned in the order, and this levy and assessment is, under the provisions of Section 5, declared to be conclusive upon and against all stockholders, present or absent at the hearing, having notice or without notice, resident or non-resident as to all matters relating to the amount of, the propriety of, and the necessity for, said assessment, as well as to any subsequent assessment which may be levied. * * * Although the Court inquires into the amount of the liabilities as well as to what will probably be realized out of the assets, its sole determination is that it is necessary and proper

that an assessment of a given amount shall be levied against each share of stock. That, and that only, is the ultimate issuable fact to be found by the Court.

The plain purport of Sections 3 and 5 is that after an order of assessment has been duly made, and the receiver has sued an alleged stockholder to recover upon the assessment, the order cannot be attacked in that action upon the ground that the assessment was unnecessary or excessive, or upon the ground that the defendant was not actually a party to, or personally notified of, the hearing upon which the assessment was made. And, as before suggested, this was the construction given those sections by the Court below. If the scope and effect of the act, and particularly of those sections, are as urged by counsel for appellants, its constitutionality might well be doubted; for counsel urges that when the law says that the assessment, as to the amount, propriety, and necessity, shall be conclusive against all parties liable, whether appearing or represented, or having notice or not, it means that stockholders, whether parties or not, and whether served or not, are bound not only as to the findings as to the indebtedness, but are concluded as to the portion thereof each is bound to pay, and are precluded from disputing their liability therefor, either by a denial that they are stockholders, or that they were stockholders when the debts were contracted, or that they own the amount of stock for which they were assessed, or from setting up any conceivable defense. There is nothing left to litigate, asserts counsel. Counsel misconstrues it, his premises are wrong, and hence his conclusion is untenable. The proceeding is not materially different from that authorized by the National Banking Act, except that under the latter the assessment is made by the Comptroller of the Currency, while here the assessment is by the Court in insolvency proceedings. Chapter 272 is really a supplementary practice act, formulated after the practice followed in this State for the collection of unpaid stock subscriptions when insolvency has ensued. * * *

> There can be no difference, in principle, in respect to the question now under consideration, between an action to recover on premium notes, when insolvency of the company has made an assessment on the members necessary, and an action to enforce a stockholder's liability, constitutional or statutory. * * *
>
> But, as we have heretofore intimated, the stockholders are not concluded in all respects by the determination of the Court, nor is that the fair meaning of Ch. 272, § 5. A person sued as a shareholder may show, if he can, that he is not a shareholder at all, or that he is not the holder of so large an amount of stock as is alleged, or that he has discharged his liability or that he has a claim against the corporation which he may, in law or equity, set off against the claim or judgment in assessment, or he may make any other defense which is personal to himself. The order of assessment is under Section 5, conclusive upon all stockholders, so far as it decides the amount of assets and liabilities of the corporation before the Court, and is conclusive as to the necessity of making an assessment to the extent and in the amount ordered."

In *Bernheimer* vs. *Converse* (*206 U. S., 516, 528*), Justice DAY, speaking of the Act of 1899, says:

> "This statute came before the Supreme Court of Minnesota in *Straw & E. Mfg. Co.* vs. *L. D. Kilbourne Boot & Shoe Co., 80 Minn., 125.* In that case it was given full consideration and its constitutionality sustained, and it was held that while the assessments upon the outstanding shares of stock in an amount necessary to meet the deficiency in the assets of the corporation was conclusive upon the stockholders as members of the corporation, yet the statute, properly construed, did not have the effect to deprive a person when sued for the amount assessed on shares of stock under the provisions of the Act, from showing that he was not a stockholder, or that he was not a holder of so large an amount of stock as was alleged, or that he had a claim against the cor-

poration which, in law or equity, he might be enabled to set off as against a claim for assessments, or from making any other defense personal to himself; and that the order of assessment was conclusive on stockholders only so far as it decided the amount of assets or liabilities of the nsolvent corporation and the necessity of making an assessment upon the stock to the extent and in the amount ordered."

Again *page 532:*

> "It is true that the stockholder is not necessarily served with process in the action wherein the assessment is made under the Act of 1899, but no personal judgment is rendered against him in that proceeding." * * *

In *Tiffany* vs. *Giesen, 96 Minn., 488:*

The action was brought under Ch. 272, Laws 1899, for the purpose of recovering from the defendant the amount of his liability as a stockholder. The complaint set out that on July 7, 1899, the company then being insolvent, defendant transferred his stock to one Edward Busch; that such transfer was made for the purpose of avoiding his liability as a stockholder for the indebtedness of the Company; that the transfer was not made in good faith and was without consideration. The complaint further contained the statement that the defendant was liable for the debts of the Company to an amount equal to the par value of the stock owned by him at the time of the transfer, and that by virtue of an order of assessment duly made defendant was within thirty days required to pay to the plaintiff, as receiver, $5,150, the amount of the assessment. The plaintiff offered no evidence of fraud and the trial court dismissed the complaint.

The Supreme Court reversed the judgment, holding that the plaintiff had made out a cause of action; for, says LEWIS, *J., page 491:*

> "At the trial the plaintiff proceeded to introduce evidence sufficient to establish defendant's constitutional liability as a stockholder, and proved that during the existence of the indebtedness of the company defendant was the owner of the stock mentioned."

"Proceeded to introduce evidence" means evidence dehors the assessment order and record. Thus where a person has transferred his stock he may be held by proving that while he was a stockholder the indebtedness arose, or that the transfer was merely colorable.

Plaintiff in the present action recognized this when he pleaded that the transfer was colorable and that the indebtedness arose while defendant was a stockholder (*fol. 19*).

He did not follow this up with evidence.

In *Swing* vs. *Humbird, 94 Minn., 1*, the defendants, residents of Minnesota, were insured in a mutual fire insurance company in Ohio. The company became insolvent, the plaintiff was appointed receiver, and an order of assessment was made upon holders of policies and the makers of premium notes and against the defendants.

The receiver sued the defendants in Minnesota upon this assessment by the Court in Ohio. START, *C. J., page 5*, says:

> "The plaintiff contends in effect that the *ex parte* decree in question is conclusive upon the defendants upon the question of their liability to assessment for losses of the company, and that they are barred from urging the defense pleaded in this case. (The defense was that the defendants were not liable by reason of a special contract with the company.) The question of the conclusiveness of an assessment upon stockholders and members of a corporation for the payment of its liabilities made by a court having jurisdiction to wind up its affairs is too well settled in this State to justify any extended discussion of it. Where a court has such jurisdiction of a corporation, its order or de-

cree making an assessment upon its stockholders or members without personal notice to them is conclusive as to all matters relating to the necessity for making the assessment, and the amount thereof. But it does not conclude any stockholder or member as to the question whether his relation to the corporation was such as to subject him to the liability for an assessment, or as to any other defense personal to himself (citing cases *Straw Co.* vs. *Kilbourne Co., 80 Minn., 125* among others)"

In *Hamilton* vs. *Loeb, 186 Fed., 7* (*C. C. A., 3rd Cir.*). The action was in assumpsit on the assessment. The defendant on February 25, 1905, purchased 529 shares of the Evans-Johnson-Sloane Co. He did not become the registered holder but the stock remained in the names of his transferors.

GRAY, *C. J., p. 7*, says:

> "This action was brought 'by the receiver' in behalf of creditors to recover the individual liability of the defendant as a stockholder 'upon an order or decree of assessment made by the State Court, *assessing the capital stock'* to an amount equal to the par value thereof."

The Court assumes that the question of the liability of the defendant was not barred or determined by the decree of the Court in Minnesota. It holds that the defendant was not liable because he was not a registered stockholder.

GRAY, *C. J.*, (*p. 13*):

> "As the defendant was not a registered stockholder, and had done nothing whereby he had become estopped from denying that he had become a stockholder, and as there are no countervailing equities to be considered, we must conclude that he is not exposed to the liability declared by the constitution of Minnesota."

The defendant there became the owner of stock. The

petition of the petitioning creditor alleged him to be a stockholder (*fol. 129*). The petition of the receiver for an assessment did likewise (*fol. 167*). The Federal Court assumed that the question of liability was an open one, and held that by the law of Minnesota, the defendant was not liable, and that only the registered stockholder became liable.

This case shows that even if the transfer in the present case was merely colorable, as alleged in the complaint in the action in Minnesota, still the defendant was not liable for debts subsequently incurred. Where the real owner does not participate in the corporate affairs only the registered holder is liable. Thus the defendant in this action is not liable unless it be shown and adjudged that there were debts unpaid which were debts when the defendant was the registered stockholder.

V.

Defendant is liable only ratably on an assessment based on debts which existed on September 5, 1904, and are unrenewed and based on all stockholders liable to contribute towards such debts. No such assessment has been made.

McDonald vs. *Dewey, 202 U. S., 510.*
Straw, etc., Mfg. Co. vs. *Kilbourne Co., 80 Minn., 125.*
Harper vs. *Carroll, 66 Minn., 486.*
Harpold vs. *Stobart, 46 O. St., 397.*
Willius vs. *Mann, 91 Minn. 494.*
Alsop vs. *Conway, 188 Fed., 568.*

The transfer of defendant's stock on September 5, 1904, is unattacked by any evidence. The holder of record is *prima facie* the owner.

McDonald vs. *Dewey, 202 U. S., 510.*
Alsop vs. *Conway, 188 Fed., 568.*

Section 3 of the Statute (Laws of 1899, Ch. 272), provides that the "Court shall levy a ratable assessment." This has a meaning well understood.

Sections 7 and 8 provide for further assessments, in case the amount collected on the original assessment shall not suffice to pay all debts.

It is provided by Sec. 2599, Ch. 34, L. 1894 (now Sec. 2864, Ch. 58, L. 1905) that after a transfer of stock the transferor shall be liable only for debts created prior to the transfer (*fol. 20*).

A statutory method provided for enforcing liability of stockholders must be followed. The receiver draws his entire rights from the statute (Ch. 272 L. 1899, Sec. 3), and cannot enforce any claim until after the ratable assessment has been made by the Court.

No assessment was made against defendant as a past stockholder. The only assessment is that applicable to present stockholders. This alone is a complete defense.

Moreover, defendant is liable to contribute only ratably with all other stock and stockholders liable to contribute to the debts which arose prior to September 5, 1904, if any, and cannot be assessed in such manner as to cause him to contribute indirectly to subsequent debts.

In *Harper* vs. *Carroll, 66 Minn., 486*, judgment was entered against all stockholders served, both past and present, to the amount of their stock, to be recovered as therein specified; and then the judgment provided that execution should issue to the amounts each past and present stockholder was liable to contribute as therein provided. CANTY, *J., page 497*, says:

> "It is proper to provide that, before resorting to the judgment against any transferor, the judgment against all his successors in interest of the same block of stock shall be first exhausted. * * *"

At page 499 the Court says, with respect to a past stockholder:

> "The part for which he can be held liable should be to the whole of such balance (amount due at the date of transfer after deducting dividends paid from corporate assets), in the ratio which his stock bears to all the stock of all solvent stockholders, both present and prior, contributing to the satisfaction of this same balance; not exceeding, of course, the amount of the judgment against him (See *Harpold* vs. *Stobart, 46 O. St., 397.*)"

The Court at *pages 499-502* works out an elaborate plan of assessing a past stockholder, and gives a numerical example. The assessment against him is entirely different from that against a present stockholder.

At *page 502* the Court says:

> "The transferors can never be assessed all alike, each for a specified per cent. of the judgment against him, as the present stockholders must be. But the proportion which each transferor must pay of the indebtedness so existing at the time of his transfer, must always be the proportion which his stock is of the stock of all the contributors to the same indebtedness, plus a part of the stock contributing to a part of the same indebtedness, which part of such stock corresponds to the part of such indebtedness to which it so contributes, all as hereinbefore explained. * * * He (transferor) can not, by any system of marshaling of assets, be made to contribute either directly or indirectly on account of the debts incurred after he made his transfer, or debts which existed at that time and have since been paid."

The Supreme Court made its findings printed at page 510. They set out the transfers, the parties thereto, the dates thereof and the debts existing at the time of each transfer, and provide that present stockholders and transferees be first assessed, and that execution issue against them, and if they are found insolvent, that execution issue against the transferors upon an assessment as therein provided.

It is sufficient here that the assessment for which a

transferor is liable under the Minnesota law is by no means the assessment such as it is claimed Selig is liable for in this action, based on all debts.

In *Harpold* vs. *Stobart, 46 O. St., 397*, cited and approved in *Harper* vs. *Carroll, 66 Minn., 486*, the debts of the corporation exceeded the par value of the stock held by solvent stockholders, past and present. In the trial Court the present solvent stockholders were assessed on the basis of all debts, and the transferors of insolvent transferees were assessed to pay the balance of the debts which existed at the dates of transfer.

SPEAR, *J.*, in a well-considered opinion, says:

> "The effect of this ruling as to each solvent assignor of stock to an insolvent assignee, was to make him liable, not simply to a proportionate amount of the indebtedness which existed while he was a stockholder according to the ratio which his proportion of the capital stock bore to the entire stock hold by solvent stockholders, but to an amount equal to the full amount of his stock. * * *
>
> "No mode of assessment should be adopted which enlarges the liability of the stockholder * * * so as to make him liable directly or indirectly, for debts contracted * * * after he ceased to be a stockholder. * * *
>
> "If any of the stockholders who are alike liable with him are assessed so that their liability is exhausted in the payment, in whole or in part, of debts created after he has assigned his stock, then he is indirectly made to respond to debts of that character. * * *
>
> "We are of the opinion that a stockholder who has, in good faith, sold or assigned his stock to one who becomes insolvent, is liable to creditors of the corporation for such portion only of the debts existing while he held the stock, and remaining due (not in excess of the amount of stock assigned), as will be equal to the proportion which the capital stock assigned by him bears to the entire capital stock held by solvent stockholders, liable in respect

of the same debts, who are within the jurisdiction." * * *

In *Willius* vs. *Mann, 91 Minn., 494,* upon a reorganization of a bank some of the stockholders ceased to be such. Later the bank became insolvent and the court ordered an assessment of 100% on the stock of both the old and new banks. The prior stockholders appealed. BROWN, *J., page 502,* says:

> "It was held in *Harper* vs. *Carroll, 66 Minn., 486,* that as between individual transferors and transferees of stock of a corporation, the liability of the transferors can not be enforced until an effort has been made to collect from a transferee. * * *
>
> "The stockholders of the reorganized bank are primarily liable for debts of the old bank and all remedies against them should be exhausted before resorting to the stockholders who did not become members of the new bank. * * *
>
> "But it is contended that the liability of stockholders, whether members of the new bank or not, was continued * * * by the judgment adopting * * * a plan of reorganization," which provides "that none of the stockholders of the bank, past or present, shall in any way, or to any extent, be relieved from any liability existing at the time of the reorganization. * * *
>
> "It is true that in proceedings against a corporation, the corporation, when duly summoned and brought into court, represents the stockholders; and all the stockholders, in so far as the interests and affairs of the corporation are concerned, are bound by the judgment of the court. But the stockholders are not bound by any such judgment as respects their individual interest or liability."

The order of assessment is not based on the existence of debts that arose prior to September 5, 1904. The petition for the assessment does not allege that any of such debts still exist. It alleges, on the contrary, that the transfer by Selig was pretended only, and that he is still a

stockholder (*fols. 164-5, 166*). The issue that the transfer by defendant was pretended only was not found, and the order of assessment did not proceed upon the same. The court there determined only the amount of indebtedness and the probable collections to be made from stockholders. The issue as to the reality of the transfer was immaterial to the order of assessment.

The order of assessment was made September 4, 1906, and the assessment became due on October 4, 1906. Unless it was valid and binding on defendant when made, he is not now bound by the same. Hence it can not be held that findings of when indebtedness arose, made seven months later, can be referred to, to support the contention that the assessment made was based as to the defendant upon the existence of debts which arose before September 5, 1904.

In *Straw, etc., Mfg. Co.* vs. *Kilbourne Co., 80 Minn., 125*, COLLINS, *J.*, says:

> "The proceeding is not materially different from that authorized by the National Banking Act, except that under the latter the assessment is made by the Comptroller of the Currency, while here the assessment is by the Court in insolvency proceedings."

UNDER THE NATIONAL BANKING ACT STOCKHOLDERS ARE LIABLE ONLY RATABLY FOR DEBTS EXISTING AT TIME OF TRANSFER.

Sec. 5151 of the Rev. Stat. provides:

> "The stockholders of every national banking association shall be held individually responsible equally and ratably * * * for all contracts, debts and engagements * * * to the extent of the amount of their stock therein, at the par value thereof."

Sec. 5152 provides:

> "Persons holding stock as executors, adminis-

> trators, guardians or trustees, shall not be personally subject to any liabilities as stockholders; but the estate and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward * * * would be if living and competent. * * * "

The Act of June 30, 1876, Ch. 156, Sec. 1 (as amended in 1892 and 1897) provides:

> "Whenever the Comptroller shall become satisfied of the insolvency of a national banking association he may * * * appoint a receiver who shall proceed to close up such association, and enforce the personal liability of stockholders, as provided by Sec. 5234."

Sec. 5234 provides:

> "On becoming satisfied * * * that any association has refused to pay its circulating notes * * * the Comptroller * * * may appoint a receiver. * * * Such receiver, under the direction of the Comptroller * * * may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders."

An assessment against shares by the Comptroller on the basis of claims proved and allowed and capital stock outstanding is substantially similar to the assessment sued on in this case.

In *McDonald* vs. *Dewey, 202 U. S., 510,* suit was brought on an assessment made by the Comptroller on the stock of a national bank. It was found that Dewey, with knowledge that the bank was insolvent and with intent to evade liability, sold 80 shares of stock in December, 1894, and January, 1895, and the same was transferred on the books of the bank; a receiver was appointed on May 20, 1897. It was held that although the transfer was made with knowledge of insolvency and to avoid liability, yet Dewey was not liable for subsequent debts, and only ratably for debts then existing, and hence was

not liable on the assessment as ordered by the Court of Appeals. Justice BROWN, *page 529*, says:

> "The injustice of holding a stockholder liable for an indefinite time in the future to creditors who may have become such years after he had parted with his stock, and who were apprised of the names of the stockholders by the published lists, is too manifest to require an extended comment. We are only applying to this case by analogy the ordinary rule of common law that a voluntary deed by a person heavily indebted is fraudulent and void as to prior creditors, merely upon the ground that he was so indebted; but, as to subsequent creditors, it is only void upon evidence that the deed was made in contemplation of future indebtedness." Citing among other cases, *Peter* vs. *Union Mnfg. Co., 56 Ohio St., 181, 204.*

The trial court found in that case that the claims of the creditors of the bank who were such when Dewey sold his stock and remained such at the time of the failure, aggregated $11,839.15, of which, however, only $2,787.97 remained unsatisfied, and that of this the ratable share of Dewey was $585.48.

This method of determining the extent of liability was in accordance with the opinion of the Supreme Court.

The dissent in that case proceeded upon the determination that a transfer with intent to avoid liability rendered the transferor not liable for subsequent debts. This result was obtained by construction from the circumstances only. The dissent is not applicable here because the Minnesota statute provides that after transfer the stockholder is liable for existing debts, but not for subsequent debts.

Mr Justice BROWN, at *page 521*, says:

> "The transferor can only be held liable if the bank be insolvent, and such insolvency be known, or ought to have been known, to him from his relations to the bank, since the transfer is *prima facie* valid, and shifts to the transferee the burden of

> the responsibility, which can be laid upon the original stockholder only in case of bad faith, or evidence of a purpose to evade liability."

When the stockholder was such at the time of the insolvency the extent of his liability and the extent of the original assessment correspond. When he is shown by common law evidence to be a stockholder at the time of the insolvency, a *prima facie* case of his liability is shown.

Where it is shown that defendant ceased to be a stockholder a substantial time before the insolvency proceedings, the amount of the assessment and the amount of his liability are entirely different, and there must be a ratable assessment on the basis of debts existing at the time of transfer.

If by any reasoning such assessment could be dispensed with, still the amount of defendant's liability must be shown by common law evidence of debts which existed at the date of transfer and have not been paid or renewed.

It was not attempted in the insolvency proceedings to adjudge whether anybody was a stockholder or to adjudge the liability of anybody. The court did not have jurisdiction to do so. These matters must be shown by common law evidence.

VI.

The Minnesota Court did not have jurisdiction to render a decree with the effect, as construed by the Trial Court, of adjudging the liability of defendant.

Bernheimer vs. *Converse, 206 U. S., 516, 528, 532.*

Converse vs. *Hamilton, 224 U. S., 243, 256, 260.*

Great Western Tel. Co. vs. *Purdy, 162 U. S., 329.*
Commercial Bank vs. *Azotine Mfg. Co., 66 Minn., 413.*
Commonwealth Mut. F. Ins. Co. vs. *Hayden, 60 Neb., 636.*
Howarth vs. *Lombard, 175 Mass., 570.*
Ward vs. *Joslin, 186 U. S., 140.*
Schrader vs. *Mfr's Nat. Bank, 133 U. S., 67.*
Mutual Fire Ins. Co. vs. *Phoenix Co., 108 Mich., 170.*
Covell vs. *Fowler, 144 Fed., 535.*
Clark vs. *Wells, 203 U. S., 163.*
French vs. *Busch, 189 Fed., 480, 483.*

Upon proof that defendant was once a stockholder, although he had transferred his stock more than a year before the proceeding in bankruptcy and twenty months before the beginning of insolvency proceeding, and although by the statute a stockholder is liable only ratably, the trial court held that the order of assessment rendered the question of defendant's liability for the assessment a matter *res adjudicata.*

Defendant was not made a party to the proceedings and had no notice of the filing of the complaint on June 25, 1906. The affidavit of default dated June 20, 1906, recites that the defendant corporation did not appear (*fol. 135*). This was sworn to subsequent to the date of the pretended appearance of the corporation (*fol. 135*).

No notice was given defendant of the hearing on the petition to appoint a receiver, nor of the order of June 25, 1906, appointing the receiver. The order qualifying the receiver by approving his bond was not made until July 9, 1909. Apparently it was never filed (*fol. 150*).

Defendant had no notice of the order of June 28, 1906, limiting the time for creditors to intervene and file claims (*fol. 151*). This order was, however, published in

a newspaper (*fol. 159*). It was mailed to creditors but not to stockholders (*fol. 152*), although by the terms thereof it did not provide that it should be mailed to either. By the terms and publication thereof the time to file claims was limited to January 2, 1907 (*fol. 159, 152*). It provided that creditors might object to claims filed, but gave the stockholders no such right (*fol. 151*).

It is asserted in the record by affidavits that copies of the order of July 5, 1906, setting the time for hearing on the receiver's petition for assessment, were mailed to both defendant and Mayer, his transferee (*fol. 173*), and that this order was published (*fol. 177*). The order for a hearing provides that it should be mailed to each creditor. The affidavit of mailing shows that this order was not mailed to any creditors. The notice was jurisdictional and the hearing not being duly brought on, the Court failed to acquire jurisdiction of the subject matter over the defendant.

The order as mailed to stockholders recited:

> Upon the petition that the Court order an assessment upon each share of stock of said defendant and against each of its stockholders. * * * (*fol. 172*).

This was not notice of any intent to adjudge the elements of personal liability.

On the hearing on the petition for assessment no creditors appeared. If the creditors had been notified as provided for in the order for hearing, the amount of claims would have been ascertained at about $146,169.51, as finally adjudged (*fol. 217*). The receiver's petition stated the indebtedness to be over $250,000 (*fol. 164*). No stockholders appeared.

The order of assessment made September 6, 1906, provided that the same shall be mailed to each stockholder within five days (*fol. 180*). The affidavit of mailing the same with list of stockholders attached was sworn to March 5, 1908 (*fol. 184*).

After the time for filing claims had elapsed and claims to the amount of only $85,000 had been filed, without notice to the defendant an order was filed extending the time to file claims to February 16, 1907 (*fols. 189-193*). The order extending the time was published but not mailed to creditors or stockholders (*fol. 195*).

There was no notice to defendant of the hearing on the claims filed, held on April 11, 1907 (*fol. 197*). The decree entered thereon allowed claims aggregating $146,-169.51 (*fol. 218*). It can not be claimed that the decree adjudged against the defendant the time when the claims arose, because he had no notice of this hearing, or of the decree entered thereon.

No statute provided that the court of Minnesota should have personal jurisdiction over stockholders. On the contrary, Sec. 5, Ch. 272, L. 1899, provided that the assessment should be conclusive as to all matters relating to the amount of and propriety of and the necessity for the said assessment. As the assessment provided by the statute (Sec. 3) is one ratable only, the defendant was clearly not liable for the assessment and the question of liability could not be adjudged by the court in Minnesota.

It has always been held that an assessment is conclusive upon stockholders not served with process on the point of the extent to which it is necessary to resort to the individual liability of stockholders and no further.

In *Clark* vs. *Wells*, *203 U. S.*, *163*, where there was an attachment against a non-resident who was served by publication and notice only, *Justice* DAY, *page 170*, says:

> "It must be taken at the outset as settled that no valid judgment *in personam* can be rendered against a defendant without personal service upon him in a court of competent jurisdiction, or waiver of summons and voluntary appearance therein. * * * We hold that to the extent that it rendered a personal judgment absolute in terms, the court exceeded its jurisdiction in the case, not

having, by service or waiver, personal jurisdiction of the defendant.

"The judgment to that extent is therefore modified and made collectable only from the attached property."

In *Great Western Tel. Co.* vs. *Purdy, 162 U. S., 329,* a "call or assessment" made by a court in Illinois was sued on in Iowa. The Court applied the statute of limitations of that state, and the plaintiff obtained a writ of error to the Supreme Court.

Justice GRAY, *page 336,* says:

"The order of assessment, whether made by the directors as provided in the contract of subscription, or by the Court as the successor in this respect of the directors, was doubtless, unless directly attacked and set aside by appropriate judicial proceedings, conclusive evidence of the necessity for making such an assessment, and to that extent bound every stockholder, without personal notice to him."

In *Mut. Fire Ins. Co.* vs. *Phoenix Co., 108 Mich., 170, 34 L. R. A., 694,* GRANT, *J., page 696,* says:

"We are not dealing with a case where a stockholder is interposing the defense of payment, or any other defense which was not passed upon in the original suit against the corporation. In such a case there is no judgment or decree of the court of a sister state which other courts must recognize."

In *Ward* vs. *Joslin, 186 U. S., 140,* it was held that where a stockholder is sued in another jurisdiction on a judgment obtained against the corporation in Kansas, he is not precluded from showing that the liability of the corporation was *ultra vires* and that by the proper interpretation of the constitution and the laws of Kansas, a stockholder is not liable for the *ultra vires* "dues" of the corporation.

Chief Justice FULLER, *page 151*, says:

> "If, however, under the State decisions, the corporation would be held estopped from denying the liability, it does not follow that the stockholders must be held liable, if the obligation was in fact incurred without authority."

In *Schrader* vs. *Mfrs' Nat. Bank, 133 U. S., 67*, it was held that in an action against a stockholder of a national bank upon a judgment against the bank obtained in an action begun after liquidation, the judgment could be re-examined as regards the liability of stockholders.

In *Covell* vs. *Fowler, 144 Fed., 535*, a receiver of an insolvent corporation in Nebraska, on a judgment obtained in Nebraska against the corporation, brought suit in a Federal court in Illinois against a stockholder who was a resident of Illinois, and liable on both the subscription to stock and on the double liability imposed by the statutes of Nebraska.

KOHLSAAT, *C. J., page 538*, says:

> "The judgment of the Omaha court is *prima facie* conclusive upon the indebtedness of the corporation by reason of the services rendered subsequent to the placing of the bank in the receiver's hands, but this court sitting in equity would have full power in this proceeding to determine whether the right of action was such as to bind the stockholders."

In *French* vs. *Busch, 189 Fed., 480, 483*, it was held that a stockholder might set up as a defense to an assessment made in another jurisdiction, that he was not liable because he had received his stock as a bonus with the knowledge and consent of the bondholders who were the only existing creditors.

In *Howarth* vs. *Lombard, 175 Mass., 570*, KNOWLTON, *J., page 306*, says:

> "It is held that the receiver is the only person who can collect this fund. This is equivalent to saying that it can be collected only of those who are stockholders at the commencement of the proceedings. * * *
>
> "Of course, the defendant may show, if he can, that he is not a stockholder of this bank, or not a stockholder for so large an amount as alleged, or may make any other defense that is personal to himself, but we are of the opinion that as a member of the corporation he is bound by the decision of the court of the State where the corporation was organized, made in determining its affairs in insolvency and determining the amount of its assets and liabilities and the amount of the assessment which should be made upon the stockholders."

The following cases also proceed upon the theory that the assessment does not adjudge liability and does not determine personal defenses:

> *Bernheimer* vs. *Converse, 206 U. S., 516, 528, 532.*
>
> *Converse* vs. *Hamilton, 224 U. S., 243, 256, 260.*

In *Commercial Bank* vs. *Azotine Mfg. Co., 66 Minn., 413*, COLLINS, *J., page 416*, says:

> "Findings as to the amount of shares of stock held by non-resident stockholders, over whom the court had acquired no jurisdiction, or any determination as to their liability, would have been useless, for no one would have been bound by such findings."

In *Commonwealth Mut. F. Ins. Co.* vs. *Hayden, 60 Neb., 636, 83 Am. St. Rep., 545*, SULLIVAN, *J.*, says:

> "The Massachusetts court could not make a conclusive adjudication by finding that the assessments which it ratified were based on losses or expenses incurred during the time defendants

were policy holders. * * * But while there can be no doubt about the right of defendants in this action to show that the assessments were not based on liabilities incurred during the period of their membership, and that the judgment pleaded is, therefore, void for want of personal jurisdiction, we think the petition is not defective for failing to allege the facts showing that the court acted within the limits of its authority."

VII.

The order of assessment cannot be conclusive upon points other than those properly before the Court and necessarily decided.

Matters collaterally considered by the Court in Minnesota or admitted by the corporation in the assessment proceedings are not concluded by the order of assessment or adjudged in that proceeding.

In *Stokes* vs. *Foote, 172 New York, 327, 341,* BARTLETT, *J.*, says:

> "It is well settled that although a decree in express terms purports to affirm a particular fact or rule of law yet if such fact or rule of law was immaterial to the issue, and the controversy did not turn upon it, the decree will not conclude the parties thereto" (citing cases).
>
> * * * Lord Chief Justice DE GRAY said in the case last cited (Duchess of Kingstairs case, Everest & Strode, 410): 'That neither the judgment of a concurrent or exclusive jurisdiction is evidence of any matter which came collaterally in question, though within the jurisdiction, or of any matter incidentally cognizable, or of any matter to be inferred by arguments from the judgment.' "

The order provides for an assessment against stock and

parties liable. There are no findings of fact. It is improper to make the assessment more precise and hence more binding than was necessary and was intended by the court. It is only the ultimate facts adjudged that are binding. The defendant was not a party to the assessment suit and made no admissions therein. To say that constructive admissions by the corporation by failure to deny allegations concerning the defendant are to be taken as actual admissions by the defendant and as matters adjudged to be true and concluded, is quite startling. Such matters were neither found nor adjudged, nor passed upon in any matter.

VIII.

The action is barred by the Statute of Limitations contained in Section 394 of the New York Code.

Said section provides:

> "This chapter does not affect an action against a director or stockholder of a moneyed corporation or banking association to recover a penalty or forfeiture imposed, or to enforce a liability created by the common law or by statute; but such an action must be brought within three years after the cause of action has accrued."

The order of assessment was entered September 4th, 1906. The assessment was due thirty days thereafter or October 4th, 1906. This action was begun by service of summons and complaint December 4th, 1909, more than three years after the action accrued. The issue of the statute of limitations was presented to the Court (*fol. 88*), and passed upon by it (*fol. 51*).

The statute says "stockholder of a moneyed corporation, etc." In New York only stockholders of moneyed

corporations are subject to this superadded liability. The statute includes directors, who are liable in some instances in the case of business corporations. The word "moneyed" refers to and describes the kind of liability meant, and points out the occasion where it arises in New York, and does not limit the application of the statute.

The policy in New York as elsewhere is to give greater security to the creditors of moneyed corporations, not less.

The statute applies to business corporations.

> *Staten Isl. Co.* vs. *Hinchcliffe, 170 N. Y., 473.*
> *Morgan* vs. *Hedstrom, 164 N. Y., 224.*
> *Shepard* vs. *Fulton, 171 N. Y., 184.*

In *Staten Island Co.* vs. *Hinchcliffe, 170 N. Y., 473,* the action was to recover from the director of a New Jersey business corporation debts of the corporation because of failure to file an annual report pursuant to Section 30 of the Stock Corporation Law of New York.

WERNER, *J.*, *page 478*, says:

> "It will be observed that this section contains no limitation upon the time within which such liability could be enforced. The only limitation was found in Section 394 of the Code of Civil Procedure, which provides that an action to recover a penalty or forfeiture, or to enforce a liability created by law against a director or stockholder of a corporation must be brought within three years after the cause of action has accrued. The liability of a director under this section being in the nature of a penalty, actions to enforce such liability were governed by the provisions of that Code section."

Morgan vs. *Hedstrom, 164 New York, 224,* was also an action to enforce liability for debts of a business cor-

poration against directors for not filing annual reports.

LANDON, *J., page 232:*

> "The action was begun May 13, 1896, and thus within the three years limited by section 394 of the Code of Civil Procedure."

In *Shepard* vs. *Fulton* (*171 New York, 184*), the action was to enforce payment by a director of the debts of a business corporation because of failure to file an annual report pursuant to section 30 of the Stock Corporation Law.

WERNER, *J., page 190*, says:

> "Section 30 of the Stock Corporation Law contained no limitation upon the time within which the liability of directors therein created could be enforced. The only limitation was found in Section 394 of the Code of Civil Procedure, which provides that an action to recover a penalty or forfeiture, or to enforce a liability credited by law against a director or stockholder of a corporation, must be brought within three years after the cause of action has accrued. The liability of a director under Section 30 being in the nature of a penalty, actions to enforce such liability were governed by the provisions of said Section 394 of the Code."

In *Bernheimer* vs. *Converse, 206 U. S., 516, 535*, the Court refused to apply this section to the case of a business corporation, because it seemed to the Court to apply only to the liability of a stockholder in a moneyed corporation. But no mention is made to the New York decisions and apparently they were not called to the attention of the Court.

The Supreme Court follows that rule of construction of the statute of limitations of a State which is adopted by the State Courts.

> *Balkam* vs. *Woodstock Co., 154 U. S., 177, 187.*

The Supreme Court on ascertaining the construction

of the State Court would apply that construction regardless of its own prior decisions.

Green vs. *Neal, 6 Pet., 291.*
Fairfield vs. *Gallatin, 100 U. S., 47, 54.*
Bauserman vs. *Blunt, 147 U. S., 647, 653.*
Moores vs. *Nat. Bank, 104 U. S., 625, 629.*

An expression as to the construction of a State statute by the highest Court of the State is presumed to be made with due consideration.

Manhattan Ins. Co. vs. *Albro, 127 Fed., 281.*
San Diego Co. vs. *Souther, 90 Fed., 164.*

IX.

The judgment should be reversed, with costs.

Respectfully submitted,

JAMES, SCHELL & ELKUS,
Solicitors for Defendant,
170 Broadway,
New York City.

ABRAM I. ELKUS,
WESLEY S. SAWYER,
Of Counsel.

April, 1914.

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Supreme Court of the United States.

TERM, 1914.

No. 815.

ARTHUR L. SELIG,

Plaintiff in Error,
Defendant Below,

vs.

CHARLES E. HAMILTON, as Receiver of EVANS, JOHNSON, SLOANE COMPANY,

Defendant in Error.
Plaintiff Below.

BRIEF OF DEFENDANT IN ERROR.

A BRIEF STATEMENT OF THE CASE.

This was an action at law brought in the United States District Court of the Southern District of New York, by the defendant in error, as Receiver of Evans, Johnson, Sloane Company, an insolvent Minnesota corporation, on behalf of and as the statutory representative of its creditors, to recover the constitutional liability of defendant Arthur L. Selig, the plaintiff in error, as a stockholder of said corporation, upon a decree of assessment made by the Minnesota Court in the proper sequestration action, such decree of assessment being for the full par value of the stock and against all parties liable.

The action in Minnesota was the proper sequestration action to wind up the corporation and enforce the liability of its stockholders by means of a ratable assessment upon the capital stock of the corporation and against all stockholders and against all parties liable thereon (R. 78).

The summons in the sequestration action was duly served on the corporation, which thereafter duly appeared by its attorney and answered (R. 71, 81); and, thereafter an order was duly made in the action appointing defendant in error as receiver. Said receiver was by the order of his appointment directed to enforce the liability of all stockholders and parties liable by means of the assessment proceedings (R. 88).

Upon the petition of the receiver for an order of assessment, the Court made its order for hearing thereon and directed notice thereof to be given by mailing copies, and by publication (R. 108). Notice of the hearing was duly given and a copy thereof was duly mailed to said defendant Arthur L. Selig (R. 110, 111); and the entire proceedings were regular and in compliance with the statute.

Soon after the commencement of the sequestration action the Court made an order therein requiring creditors to present their claims by filing verified complaints, and providing that any person interested might file an answer to any claim, and providing for a time for the trial upon such claim, notice of which hearing was duly given as therein provided (R. 93 to 100).

On April 11, 1907, said action regularly came before the Court for the purpose of determining and adjudging the respective amounts at which the respective claims were entitled to be allowed; and all the claims except that of Loeb & Schoenfeld Co. were then heard and tried, and the Court then made its findings and judgment determining and adjudging *when each claim arose*, the amount of each claim, exclusive of interest, *amount of interest on*

each claim, and the amount for which each claim was allowed, *including interest* (R. 127-145).

The claim of Loeb & Schoenfeld Co. was heard in November, 1907, and subsequently allowed. Five thousand dollars ($5,000.00) of this claim arose prior to Sept. 5, 1904. (R. 181, 174, 184, 186, 187.)

The following indebtedness was found and adjudged to have arisen wholly prior to September 5th, 1904, the date of the alleged transfer by defendant of his stock:

Name of Creditor.	Amount of Claim.	When Claim Arose.	Pages where found in Record.
E. C. Higgins	$51.12	April to July, 1904	130-152
J. P. Logar and Sons	290.38	April 16, 1904	135-155
Holden and Fuller	120.77	August 15, 1904	135-153
Value Garment Co.	1,532.45	Mar. to July, 1904	136-151
Charles Kohlman and Co.	4,712.62	July 21, 1904	137-157
Loeb and Schoenfeld	5,132.50	July, 1904	174-187
	$11,839.84		
Int.	2,841.56		
Total	$14,681.40		

And the following indebtedness was found and adjudged to have arisen partly prior to September 5, 1904:

Name of Creditor.	Amount of Claim.	When Claim Arose.	Pages where found in Record.
Journal Printing Co.	$12,167.85	Dec., 1902 to Dec., 1905	137-159
Edwin Lowe and Co.	182.71	Jan. 1, '04 to July, '05	137-166
Stephen Sanford and Son	1,780.51	Apr. 27, '04 to Nov., '04	139-169
John C. Uhrlaub	186.18	Mar., '04 to Nov., 28, '04	142-172
William Benz	20.42	Jan. 1, '04 to July, '05	136-165
W. and S. Blackinton	319.85	Jan. 1, '04 to July, '05	138-168
Minnesota Tribune Co.	9,650.25	Mar. '04 to Sept., '05	138-161
	$24,248.33		
Int.	6,062.08		
Total	$30,310.41		

It is alleged in paragraphs 14, 15 and 16 of the complaint that on or about the 23rd day of April, 1902, said defendant subscribed for, took and became the owner of fifty (50) shares of the capital stock of said Evans, Johnson, Sloane Co., that the same were registered in his name on the books of the corporation, that defendant continued to be the record owner of said stock until the 5th day of September.

1904, when, for the purpose of avoiding his liability on said shares he made a pretended transfer of record thereof to one Max Mayer, that the transfer was without consideration and made with the understanding that defendant should remain the owner of the entire beneficial interest in the stock, and that more than forty thousand dollars ($40,000.00) of the allowed indebtedness arose prior to said pretended transfer (R. 11, 12). The complaint also sets out the order of assessment, and all the proceedings in the sequestration action.

Defendant admits that he subscribed for, took and became the owner of the stock, and that he transferred them to Max Mayer. As to the allegation of the complaint that $40,000.00 of the allowed indebtedness arose prior to the pretended transfer, defendant merely avers that he has no knowledge or information thereof sufficient to form a belief (R. 25).

That defendant became the owner of the stock in April, 1902, and continued to hold the stock of record in his name until Sept. 5th, 1904, and thus became subject to a stockholders' liability, was proven by the stock book of the corporation, plaintiff's Ex. 9, (R. 191, 51); and that during the time defendant was the owner and record holder of the stock indebtedness of the corporation arose which was thereafter allowed, was proven by the records of the sequestration action and assessment proceedings, plaintiff's Ex. 6 (R. 38, 145, 129, 151, 174).

At the trial no evidence was offered to prove that the transfer by defendant of his stock was fraudulent or colorable merely and not bona fide, plaintiff claiming (R. 35, 51) that, inasmuch as defendant was a stockholder when a large amount of the allowed indebtedness arose, proof of the colorable character of the transfer would not be necessary to show that defendant was before the Court in the assessment proceedings; and inasmuch as the question of

the colorable character of the transfer was before the Court in the assessment proceedings, such question would not be open to determination in this action upon the question of the amount of the assessment.

STATEMENT OF THE PRINCIPAL QUESTIONS INVOLVED.

1. Does the statute providing for the enforcement of the liability of stockholders confer upon the Minnesota Court jurisdiction, without personal service, to bring before it a stockholder, who, although he may have transferred his stock, is nevertheless liable as a stockholder for prior debts?

2. Is the judgment in the sequestration action and assessment proceedings adjudging when the debts arose, the amount thereof, including interest, and that a large part of the allowed indebtedness arose prior to the transfers by such stockholders of their stock, competent evidence of the existence of such allowed indebtedness in actions against them upon the assessment?

3. Does the Minnesota Statute for the enforcement of the liability of stockholders of a Minnesota corporation, when construed to apply to past as well as present stockholders, violate any provision of the Federal Constitution?

THE MINNESOTA CONSTITUTION AND STATUTES.

Sec 3 of Article X of the Minnesota Constitution imposing the liability is as follows:

> "Each stockholder in any corporation, excepting those organized for the purpose of carrying on any kind of manufacturing or mechanical business, shall be liable to the amount of the stock held or owned by him."

The Evans, Johnson, Sloane Co. belonged to the class of corporations whose stockholders were liable, since the

corporation was authorized to do other business than manufacturing.

Arthur v. Willius, 44 Minn. 409;

Merchant's Nat'l. Bank v. Thresher Co., 90 Minn. 144.

STATUTE WHICH INVALIDATES ANY TRANSFER OF STOCK AS TO PRIOR DEBTS OF THE CORPORATION.

Section 2864 R. L. 1905 (Sec. 2599, Gen. St. 1894) is as follows:

> "The transfer of shares is not valid, except as between the parties thereto, until it is regularly entered on the books of the company, * * * but such transfer shall not in any way exempt the person making such transfer from any liabilities of said corporation which were created prior to such transfer."

CHAP. 272, LAWS 1899.

This Act provides for the enforcement of the liability of stockholders upon or on account of any liability upon or "in respect to the stock or shares at any time held or owned by such stockholders." This statute is set forth in full in the complaint (R. 12-16). It is also set out quite fully in the decision in Bernheimer v. Converse, 206 U. S. 516, 27 Sup. Ct. Rep. 755.

ARGUMENT.

We shall present our views under the following general heads:

1. The statute gave the Minnesota Court jurisdiction, without personal service, to make an order of assessment adjudging the amount which any stockholder or party liable under his contract of stockholding should pay, and authorizing the receiver to bring suits against each and every person or party liable upon or on account of any stock of the corporation, whether as past or present stockholders.

2. By the order of assessment the Court intended to and did include the defendant Sdig among those adjudged subject to the assessment under the general designation of "each and every person or party liable."

3. As the Minnesota Court had jurisdiction over all parties subject to a stockholder's liability, whether past or present stockholders, and exercised that jurisdiction in the present case, the assessment itself establishes the existence of the indebtedness which made the assessment necessary, since the statute provides that the assessment is conclusive as to the necessity therefor and amount thereof.

4. Under the Minnesota Statute the assessment is a judgment in a proceedings in which the Court had jurisdiction, without personal service, to bring before it stockholders who had transferred their stock for the purpose of determining whether indebtedness existed for which past stockholders remained liable precisely as it had jurisdiction to bring before it present stockholders for the purpose of determining whether indebtedness existed for which present stockholders remained liable.

5. It is not necessary that the records should show the grounds of a decree of assessment against any person or party adjudged liable thereto, and even where one of the grounds is that an alleged transfer is not bona fide but to a dummy the real owner is chargeable in an action at law.

6. Neither the question of the existence of the allowed indebtedness, which arose prior to the alleged transfer by defendant of his stock, nor that of the bona fides of such alleged transfer, were jurisdictional questions.

7. The statute in conferring upon the Minnesota Court jurisdiction, without personal service, to bring before it in the assessment proceedings stockholders, who have transferred their stock, for the purpose of considering proofs as to what parties are liable or subject to an assessment and adjudging an assessment against them, is constitutional.

8. The individual liability of the stockholders did not pass to the trustee in bankruptcy and the discharge in bankruptcy did not affect the right of creditors to enforce the liability by means of an order or decree of assesment in the State Court.

9. The action was commenced within the six years limitation prescribed by Sec. 382, N. Y. Code of Civ. Proc. and the cause of action is not barred.

I.

THE STATUTE OF MINNESOTA GAVE THE MINNESOTA COURT JURISDICTION WITHOUT PERSONAL SERVICE, TO MAKE AN ORDER OF ASSESSMENT ADJUDGING THE AMOUNT WHICH ANY STOCKHOLDER OR PARTY LIABLE UNDER HIS CONTRACT OF STOCKHOLDING SHOULD PAY, AND AUTHORIZING THE RECEIVER TO BRING SUITS AGAINST EACH AND EVERY PERSON OR PARTY LIABLE UPON OR ON ACCOUNT OF ANY STOCK OF THE CORPORATION, WHETHER PAST OR PRESENT STOCKHOLDERS.

UNDER THE LAWS OF MINNESOTA A STOCKHOLDER CANNOT CHANGE OR AFFECT HIS RELATION OR LIABILITY AS A STOCKHOLDER AS TO PRIOR EXISTING DEBTS BY ANY TRANSFER OF HIS STOCK.

In construing Sec. 2864 R. L. 1905, the Supreme Court of Minnesota held in Gunnison v. U. S. Inv. Co. et al, 70 Minn. 292, 73 N. W. 149, as follows:

> "G. S. 1894, Sec. 2599, construed and *held* that a shareholder in a corporation cannot affect his constitutional liability for the prior debts of the corporation by a bona fide sale of his stock to a solvent party, and a transfer thereof on the books of the corporation."

And on page 297 of the decision of this case the Court, speaking through Start, C. J., further says:

> "The prohibition against the transfer of shares in a corporation so as to affect the liability of stockholders for existing debts of the corporation is absolute."

THE LIABILITY OF ALL STOCKHOLDERS AND ALL PARTIES LIABLE, WHETHER AS PAST OR PRESENT STOCKHOLDERS, MUST BE ENFORCED, IF AT ALL, IN A SINGLE WINDING UP ACTION AND ASSESSMENT PROCEEDINGS.

The nature of the stockholders' liability of a Minnesota corporation is such that it can be enforced only by a single action and assessment proceedings.

In Arthur v. Willius, 44 Minn. 409, on page 413 of the opinion it was said:

> "As to the alleged defect of parties the rule undoubtedly is that in an action under Chapter 76, when it is sought to enforce the individual liability of stockholders, all of the stockholders should be made parties, and that if they are not it constitutes a defect of parties which may be taken advantage of by answer or demurrer."

And in Allen v. Walsh, 25 Minn. 543, the leading case in Minnesota on this point, the Court, on page 556 of the opinion says:

> "It is obvious from an examination of these sections of Chap. 76, that the remedy they provide contemplates a single action in which all persons having or claiming any interest in the subject of the action shall be joined or properly represented, and their respective rights, equities and liabilities finally settled and determined."

Chapter 272, Gen. Laws of Minn. for 1899 did not change the law as laid down in the Minnesota decisions above cited.

As stated in its title, Chap. 272 was an "Act to provide for the better enforcement of the liability of stockholders of corporations." In construing the act the Court in Straw and E. Mnfg. Co. v. Kilbourne B. & S. Co., 80 Minn. 125, on page 133 of its opinion, says:

> "Chap. 272 is really a supplementary practice act formulated after the practice followed in this state for the collection of unpaid stock subscriptions when insolvency ensues."

The conditions which made such additional legislation necessary are stated by the Supreme Court in Bernheimer vs. Converse, as follows:

> "The liability arising under the constitution of Minnesota was such that legislation was appropriate to make it effectual. We can find nothing in the fact that one legislature has passed an act which would conclude a subsequent law-making body of equal power from passing a new and additional measure to make

> the remedy more effective. That the first act did not accomplish its purpose is evident. Under it stockholders in another state who could not be reached by personal service, were immune from liability, and the entire burden was cast upon local stockholders. There was no provision for a receiver or assignee beginning action outside the state, and it was held by this Court in Hale v. Allison (supra) that a chancery receiver was powerless to enforce the rights of creditors beyond the borders of the state."

In order to make the remedy effective against all stockholders and all parties liable the additional legislation was made to provide (1) that all questions relating to the amount of the indebtedness and when it arose and the amount, propriety and necessity of the assessment, should be determined in one principal or parent suit in Minnesota to which all persons who have at any time held or owned any stock upon which a liability is claimed to exist may be made parties through representation by the corporation and without personal service; and (2) that the receiver appointed by the Court in such principal action should be the statutory representative of the creditors with authority to maintain auxiliary actions against those so adjudged liable in any jurisdiction in which they may be found.

> Bernheimer v. Converse, 206 U. S. 516; 27 Sup. Ct. Rep. 755.
>
> Straw and Ellsworth Mnfg. Co. v. Kilbourne, 80 Minn. 125; 83 N. W. 36.

If defendant as a past stockholder was not before the Court in the sequestration action and assessment proceedings through representation by the corporation and service by mail, the Court could not have determined the question of whether there were prior debts for which he was liable and no assessment could have been made to which he would be subject, and his liability could not be enforced at all.

Speaking of the method of enforcing a similar liability, the Supreme Court of Kansas says:

> "It is a general rule from which, we think, no dissent exists, that if a statute prescribes a special mode of enforcing the individual liability of the stockholder of corporations that mode and that alone can be pursued. The liability can be enforced in no other way."
>
> Woodsworth v. Bowles, 61 Kans. 577.

Upon this point this Court has held that:

> "Where the statutes of the state which creates a corporation making the stockholders liable for corporate debts, provides a special remedy, the liability of a stockholder can be enforced in no other manner in a Court of the United States."
>
> Fourth Natl. Bank v. Franklyn, 120 U. S. 747.

THE MINNESOTA STATUTE FOR THE BETTER ENFORCEMENT OF THE STOCKHOLDERS' LIABILITY BY ITS TERMS APPLIES EQUALLY TO PAST AND PRESENT STOCKHOLDERS.

The provisions of Chapter 272 relating especially to this point are the following, the italics being ours:

> "Section 1. Whenever any corporation created or existing by or under the laws of the State of Minnesota, whose stockholders or any of them are liable to it or to its creditors, or for the benefit of its creditors, upon or on account of any liability for or upon or growing out of, or in respect to the stock or shares *at any time held or owned by such stockholders*, respectively, * * * the District Court appointing such receiver, and having jurisdiction of the matter of said assessment may proceed as in this Act provided."
>
> "Section 5. Said order and the assessment thereby levied shall be conclusive upon and against all parties liable upon or on account of any stock or shares of said corporation, whether appearing or represented at said hearing, or having notice thereof or not, as to all matters relating to the amount of and the propriety of and necessity for the said assessment."

The words in Sec. 1, "any liability for or upon or growing out of or in respect to *the stock or shares at any time held or owned by such stockholders*" clearly refer to stockholders who have transferred their stock, and shows that the intent of the act is that the judgments and decrees in

the sequestration action and assessment proceedings shall be just as much an estoppel against past as present stockholders.

This construction appears to have been placed on the act by the Supreme Court of Minnesota in Tiffany v. Giesen which was brought under Chap. 272, Laws 1899, against defendant Giesen upon stock owned by him when the indebtedness arose, but which were thereafter transferred to one Borsch. In this case the plaintiff offered no evidence in proof of the allegations of his complaint that the transfer to Borsch was without consideration, not made in good faith, fraudulent and void, but relied upon showing that the indebtedness arose prior to the transfer. In deciding that defendant Giesen, the transferror, was subject to the assessment the Court says:

> "The complaint states a cause of action based upon the fact that defendant was the owner of the stock at the time of the indebtedness of the company."
>
> Tiffany v. Giesen, 96 Minn. 488, 490; 105 N. W. 901.
>
> Gunnison v. Inv. Co., 70 Minn. (supra).

II.

BY THE ORDER OF ASSESSMENT THE COURT INTENDED TO AND DID INCLUDE THE DEFENDANT SELIG AMONG THOSE ADJUDGED SUBJECT TO THE ASSESSMENT UNDER THE GENERAL DESIGNATION OF "EACH AND EVERY PERSON OR PARTY LIABLE."

We have already pointed out that the statute conferred jurisdiction upon the Minnesota Court, without personal service, to bring before it in the assessment proceedings those who remain subject to a stockholder's liability, notwithstanding they have transferred their stock; and that the Minnesota Court intended to and did include defend-

ant Selig among those adjudged subject to the assessment clearly appears from the following:

1. As we have already pointed out, the statute provides a single parent suit for the enforcement of the liability of all stockholders and parties upon or on account of or in respect to the stock or shares "at any time held or owned by such stockholders."

2. In the complaint in the sequestration action, and also in the petition for an assessment, defendant Selig is named as a stockholder or party liable (R. 75-104).

3. The order and notice of hearing on the petition for an assessment was served on defendant Selig by publication and by mailing to him a copy of the order and notice. (R. 111.)

4. A copy of the order of assessment was mailed to defendant Selig in compliance with the terms of the order. (R. 117.)

5. It appears that defendant Selig is within the class termed stockholders by Sec. 1, Chap. 272, since it is proven by the stock book (R. 191) that he was the owner of the stock from April, 1902, to September 5th, 1904, and by the judgment (R. 127-145) that during that time a large amount of the allowed indebtedness arose.

6. The proceedings are just what the statute requires that they should be to enforce the liability of a past stockholder, that is, one who has transferred his stock but remains liable.

As was said in Hamilton v. Levison:

> "It is quite true that the decree no where says who the stockholders are that are liable; but the receiver's petition states them in detail and so does the original complaint in the action. In each of those pleadings the defendant appears as a stockholder who is liable, and the decree certainly must be read with the whole roll. No one taking up the roll as a whole, and re-

> membering that the decree was entered upon a default, can fail to understand the defendant to have been included within the term 'stockholders liable.'"
>
> Hamilton v. Levison, 198 Fed. 444, 446, affirmed in Levison v. Hamilton (C. C. A.), 204 Fed. 72.

If the judgment roll in the decree of assessment, through mistake or otherwise, shows upon its face that a person is not thereby adjudged to be subject to the assessment, the decree of assessment is not evidence against him in an action brought against him upon such decree. Hamilton v. Titus, 185 Fed. 140, 144.

IT WAS NOT NECESSARY THAT THE DECREE OF ASSESSMENT SHOULD THEREIN PERSONALLY NAME THOSE THEREBY ADJUDGED SUBJECT TO THE ASSESSMENT, AS THE JUDGMENT IS NOT A PERSONAL JUDGMENT.

The decree of assessment follows the language of the statute (R. 13). It orders an assessment (R. 114):

> "Upon and against each and every share of said capital stock and upon and against the persons or parties liable as stockholders of said defendant for, upon or on account of such shares of stock; that each and every person or party liable as such stockholder * * * pay, etc."

As it is the intent and meaning of the statute that the decree of assessment shall be broad enough to include all who are brought before the Court in the sequestration action and assessment proceedings through representation by the corporation and without personal service, any other designation than "stockholders liable" or "each and every person or party liable" was unnecessary.

It was not necessary that the Court should make findings of fact as the basis of the decree of assessment, in order that the decree should be what it purports to be against "each and every person or party liable," that is, against past as well as present stockholders.

In Straw and E. Mnfg. Co. v. Kilbourne, 80 Minn. 125 (supra), it is held as stated in the syllabus on page 127 of the decision:

> "Findings of fact upon which to base an order of assessment under Section 3 are unnecessary."

It must be presumed that all the existing facts were proven at the hearing upon the petition for an assessment which were necessary to justify the decree adjudging "that each and every person or party liable * * * pay, etc."

III.

AS THE MINNESOTA COURT HAD JURISDICTION OVER ALL PARTIES SUBJECT TO A STOCKHOLDER'S LIABILITY, WHETHER PAST OR PRESENT STOCKHOLDERS, AND EXERCISED THAT JURISDICTION IN THE PRESENT CASE, THE ASSESSMENT ITSELF ESTABLISHES THE EXISTENCE OF THE INDEBTEDNESS WHICH MADE IT NECESSARY, SINCE THE STATUTE PROVIDES THAT THE ASSESSMENT SHALL BE CONCLUSIVE AS TO THE NECESSITY THEREFOR AND AMOUNT THEREOF.

One effect of an assessment is to adjudge the amount which any stockholder or party liable under his contract of stockholding should pay. Great Western Telegraph Co. v. Purdy, 162 U. S. 329, 337. Every past stockholder is just as much a stockholder as to the prior indebtedness as though he had made no assignment of his stock. Gunnison v. U. S. Investment Co. (supra). And whether there are debts for which any past stockholder is liable is just as much a corporate matter for conclusive determination in the sequestration and assignment proceedings as is the question of whether there are debts for which the present stockholders are liable. Hawkins v. Glenn, 131 U. S. 319, 332.

In order that an assessment have the force and effect intended, in an action thereon, it must be held to be conclusive as to the necessity therefor, that is, as to the existence of indebtedness to render an assessment proper and necessary, for otherwise the assessment determines nothing; and absolutely no reason has been shown why an assessment should be held to be conclusive upon this question as against one class of stockholders and not conclusive as against another class of stockholders.

IN THE PRESENT ACTION ONLY ONE ASSESSMENT WAS NECESSARY OR PROPER.

When the amount collectible from present stockholders and applicable to all debts is sufficient to pay only a small dividend, and the remaining prior indebtedness requires the full maximum liability of the past stockholders, only one assessment is necessary or proper; and when the Court makes a single assessment for the full maximum liability against all parties liable, it is an adjudication that the facts exist which make such assessment proper and necessary.

Therefore, granting for argument only that an assessment is something less than a judgment, as claimed by counsel, still, as it is conclusive as to the necessity for an assessment, it must be conclusive as to the existence of the indebtdeness without which there could not be an assessment. To assert that there is no indebtedness, or insufficient indebtedness, to make an assessment necessary is to raise a question as to which the assessment is conclusive, and not open to collateral attack.

IV.

UNDER THE MINNESOTA STATUTE THE ASSESSMENT IS A JUDGMENT IN A PROCEEDINGS IN WHICH THE COURT HAD JURISDICTION, WITHOUT PERSONAL SERVICE, TO BRING BEFORE IT STOCKHOLDERS, WHO HAD TRANSFERRED THEIR STOCK, FOR THE PURPOSE OF DETERMINING WHETHER INDEBTEDNESS EXISTED FOR WHICH PAST STOCKHOLDERS REMAINED LIABLE, PRECISELY AS IT HAD JURISDICTION TO BRING BEFORE IT PRESENT STOCKHOLDERS FOR THE PURPOSE OF DETERMINING WHETHER INDEBTEDNESS EXISTED FOR WHICH PRESENT STOCKHOLDERS REMAINED LIABLE.

The claim of counsel for plaintiff in error that the judgment roll is not conclusive upon the question of when the debts arose, but only upon the ultimate fact of a deficiency of assets to pay the debts, is contrary to the Minnesota Statute and the decisions in Minnesota and elsewhere which hold, in effect, that an assessment has all the attributes of a judgment, and, therefore, is conclusive not only as to the necessity for and amount of the assessment, but as to all matters relating thereto which were before the Court in the assessment proceeding.

Sec. 5 of Chap. 272 provides that the assessment:

> "Shall be conclusive upon and against *all parties liable* upon or on account of any stock or shares of said corporation as to *all matters relating to* the amount of and the propriety of and the necessity for the said assessment."

In Neff v. Lamm the plaintiff rested without introducing any evidence other than the decree of assessment to show that the corporation belonged to the class of corporations whose stockholders were subject to a stockholder's liability, and for that reason defendant insisted because plaintiff

failed to make such proof that no cause of action was shown. In deciding the case the Court says:

> "At the hearing in the original proceedings against the corporation which are contemplated by the Act providing for the 'better enforcement of the liability of stockholders of corporations' (Laws 1899, p. 315, c. 272), the Court is required to consider proofs entirely 'as to what parties are or may be liable as stockholders of said corporation, and the nature and extent of such liability,' and whether the assessment made at such hearing is necessary. The order and assessment by that Court are necessarily based upon a determination that the corporation is of the class whose stock is assessable, and not of the excepted class mentioned in Sec. 3, Art. 10, Const. Minn. * * * This is a seconary proceeding based upon a previous action in which the character of the corporation and the assessability of its stock had been judicially determined."
>
> Neff v. Lamm, 99 Minn. 115, 117, 118, 108 N. W. 849.

THE NATURE AND EFFECT OF THE SEQUESTRATION ACTION AND ASSESSMENT PROCEEDINGS.

1. The assessment proceedings, as a part of the sequestration action, were initiated by a pleading in the form of a petition to the Court setting forth the facts which make a resort to the stockholders' liability proper and necessary, and entitle the receiver to such assessment, including the names of all persons claimed to be stockholders or liable upon the contracts assumed by acquiring stock, the fact of the existence of indebtedness, and, as to stockholders who have made transfers of their stock, the fact that a large part of the indebtedness arose prior to such transfers, and also setting forth the facts which show the nature of such transfers.

2. Such petition was filed in Court, and when so filed the Court was required by statute to make an order for hearing thereon. The receiver and creditors thereby be-

came entitled, as a matter of absolute right, to a hearing and trial of the issues presented by the petition. And in order to give the stockholders sufficient notice of the hearing and opportunity to be heard upon the issues thus presented, the statute provides that the hearing shall be noticed for a date not less than thirty days after the petition is filed.

3. Regular notice of hearing was required to be given and was given to all the stockholders and persons claimed to be liable, as named in the petition. The statute confers upon the Court power to direct the manner in which the notice should be given; but reasonable notice to the stockholders of the hearing is made necessary by the statute.

4. The act absolutely excludes any ex-party action by the Court. The statute requires a regular hearing and trial of the issues presented by the petition. Both the present stockholders and those who made transfers of their stock leaving debts unpaid, as alleged in the petition, were given due notice, and they had the right to appear and be heard, and to offer evidence upon the question of the existence of indebtedness for which they were claimed to be liable. Sec. 3 of Chap. 272 provides as follows:

> "At such hearing the Court shall consider such proofs, by affidavit or otherwise, as may then be offered * * * as to the probable indebtedness of said corporation * * * and also as to what parties are or may be liable as stockholders of said corporation and the nature and extent of such liability."

And the Court is authorized to make an order of assessment only after such hearing and trial and upon a determination of the issues presented by the petition upon competent evidence offered at such hearing.

5. The order or decree of assessment is appealable like any other decree or judgment, stockholders having the right of appeal therefrom. This right of appeal is not mentioned

in Chap. 272, but the Courts of Minnesota have recognized such right of appeal in the following cases:

London & N. W. A. Mtg. Co. v. St. Paul P. I. Co., 84 Minn. 144, 146.

Potts v. St. Paul Athletic Assn., 84 Minn. 217.

Merchants Natl. Bank v. Thresher Co., 90 Minn. 144, 145.

6. The order or decree of assessment, with the judgment roll in the sequestration action and assessment proceedings of which it is a part, constitutes a judgment in a proceedings authorized by statute and which is in the nature of an equitable action against the stockholders, and persons liable upon their contracts of stockholding. As against these, or such of them as are named in the petition for an assessment and served with notice of the hearing and who are in fact subject to a stockholder's liability, it is a final judgment within the limits of the scope of such judgment. It does not purport to adjudge that any one shall pay money, or to determine conclusively, (for any purpose except the amount of and necessity for an assessment), that any of those named in the petition are subject to a stockholder's liability; but as to all other matters relating to the necessity for and amount of an assessment, and as to all steps in the sequestration action and assessment proceedings, it is conclusive and binding upon the individuals named in the petition and who are in fact liable upon the obligation which they assumed by acquiring stock of the corporation. And as such a judgment it establishes not only the amount which each stockholder, and person liable upon his contract of stockholding, shall pay, but also the fact that the corporation belongs to the class whose stockholders are subject to the constitutional liability (Neff v. Lamm, supra), the fact of the existence of the indebtedness which made the assessment necessary as to each and all of those whom the assessment purports to be against, the

facts of when the allowed claims arose, the interest thereon and the amount of the indebtedness, and all the facts established as steps in the sequestration action and assessment proceedings. The foregoing propositions are supported by the following decisions:

Neff v. Lamm, 99 Minn. 115, 117, 118;
Hamilton v. Levison, 198 Fed. 444;
Levison v. Hamilton (C. C. A.), 204 Fed. 72;
Hamilton v. Simons, 178 Fed. 130;
Hamilton v. Titus, 185 Fed. 140;
Langworth v. Garding, 74 Minn. 325;
Howarth v. Lombard, 175 Mass. 57;
Howarth v. Ellwanger, 86 Fed. 54;
Hawkins v. Glenn, 131 U. S. 319;
Glenn v. Liggett, 135 U. S. 533;
Sanger v. Upton, 91 U. S. 56;
Burget v. Robinson, 113 Fed. 669; 123 Fed. 262; 188 U. S. 739;
Spargo v. Converse, 191 Fed. (C. C. A.) 823.

That the decree of assessment here involved, together with the judgment roll in the sequestration action, is sufficient to establish the existence of the prior indebtedness which made the assessment proper and necessary against one who surrendered his stock in August, 1904, is directly held in Levison v. Hamilton, (supra), in which the Court, in holding that a past stockholder adjudged liable or subject to the assessment, is concluded thereby upon the question of the existence of indebtedness to make the assessment necessary, says:

> "There can be no doubt that a certificate was issued to the defendant, in his own name, without qualification, and remained on the books of the corporation from April 23, 1902, until August 18, 1904. It is also proved that defendant's name so appeared upon the list of stockholders attached to the petition for an assessment filed in the Minnesota Court. On Sept. 4, 1906, the Court entered an order assessing $100 on

each share of capital stock owned by the stockholders, the defendant being among them. During the time that defendant held the stock in his own name, a large amount of indebtedness arose which was allowed by the Court. We think there can be no doubt, at least during this period of two years and four months, that defendant was a stockholder of the corporation. The Minnesota Court had jurisdiction to wind up insolvent corporations created by the laws of that state in the manner provided by those laws. This the Court did, giving notice to non-resident stockholders. The defendant did not appear in the winding up proceedings, where most of the defenses he now urges could have been properly heard and decided. Judgment was taken against him by default. We think the law is well settled that when the defendant became a stockholder in the Minnesota corporation, he submitted himself to the Minnesota law, as interpreted by the Courts of that state, and is bound by their decree holding him liable."

THE ORDER OF ASSESSMENT IS A JUDGMENT, WITHIN THE LIMITS OF ITS SCOPE, AGAINST EVERY PERSON OR PARTY WHO IS BOUND THEREBY AND SUBJECT TO BE SUED THEREON.

Sec. 3 provides that the Court shall consider proofs as to what parties are or may be liable to an assessment; and Sec. 5 provides that the order of assessment shall be conclusive upon and against all parties liable upon or on account of any stock as to all matters relating to the amount of and necessity for such assesment. Therefore, any stockholder, past or present, becomes bound by the assessment and made subject thereto only by the action of the Court after considering proofs as to what parties are liable or subject to the assessment; and, as to stockholders who have transferred their stock, such proofs necessarily relate to the existence of prior indebtedness. If, then, defendant Selig is bound by the judgment of assessment, within the limits of its scope, and subject to be sued thereon, it is because the Minnesota Court, after considering the proofs as to what parties are liable or subject to the assessment, adjudged that a part of the present in-

debtedness arose prior to the transfer by defendant of his stock. To assert that there has been no adjudication by the Minnesota Court against defendant Selig of the existence of such prior indebtedness would be to assert that he has not been adjudged liable or subject to the assessment, and that there is no assessment against him,—a condition which would make evidence de hors the record of the existence of such indebtedness wholly futile, and enable defendant to avoid his liability altogether.

But defendant cannot say that he has not been adjudged liable or subject to the assessment. The Minnesota Statute (Sec. 1) in force when defendant took his stock expressly includes those liable upon stock at any time held or owned by such stockholders. Therefore, defendant was before the Minnesota Court precisely as any other stockholder and adjudged liable or subject to the assessment and concluded thereby, except upon the question of whether his admitted ownership of the stock continued to a time subsequent to the accrual of present allowed indebtedness. And the stock book (R. 191) proves that the stock was held by defendant on the books of the corporation in his own name until after a large part of the allowed indebtedness arose. Levison v. Hamilton (supra).

THE JUDGMENT ADJUDGING WHEN EACH CLAIM AROSE, AND THAT A LARGE AMOUNT OF THE ALLOWED INDEBTEDNESS AROSE PRIOR TO THE TRANSFER BY DEFENDANT OF HIS STOCK, AS A PART OF THE JUDGMENT ROLL, IS JUST AS EFFECTIVE AS THOUGH MADE AT THE TIME OF THE ASSESSMENT.

In order to determine the amount of the indebtedness the interest must be found and added. Therefore, a determination of when the indebtedness arose not only relates to the assessment, but it is a necessary step in the action to wind up the corporation and assess the stock. And unless the determination of when the indebtedness arose is, with-

out personal service, binding upon those, who, by acquiring the stock, assumed the contract arising therefrom, the decree of assessment is not binding upon them as to its amount, and their liability is not enforceable.

As we have already pointed out, the Court did, as a part of the sequestration action and assessment proceedings, make findings and enter its judgment determining when the claims arose and adjudging that a large part of the allowed indebtedness arose prior to the alleged transfer by defendant of his stock (R. 127-145).

The particular facts upon which a person is adjudged liable upon the assessment need not be stated in the order of assessment. Straw and Ellsworth Mfg. Co. v. Kilbourne, 80 Minn. 125. Although the Court, in ordering an assessment, necessarily has before it all the facts and finds that the indebtedness exists, and when it arose, such findings need not be and usually are not made in writing until after the hearing upon the claims, when they are made to appear in the findings and judgment determining the amount of each claim and when it arose. The findings and judgment determining the amount of each claim and when it arose are as much a part of the winding up action and assessment proceedings as the order of assessment.

The order adjudging the corporation insolvent and appointing a receiver, the order of assesment, and the findings, and judgment determining the amount at which each claim was allowed and when it arose, each support the other, and must be considered together as constituting the judgment roll, or decree, in the parent suit.

Upon this point it was decided in Hamilton v. Simons, as stated in the syllabus:

> "The recitals of the roll and the whole record of proceedings to have a corporation declared insolvent, and an assessment made against the stockholders are admissible against stockholders in an action upon the assessment."

Hamilton v. Simons, 178 Fed. Rep. 130.

Hamilton v. Levison, 198 Fed. (supra) affirmed in Levison v. Hamilton (C. C. A.), 204 Fed. (supra.)

In respect to all of these determinations these different orders, findings and judgments are but steps in the assessment proceedings under the statute. And as they each and all relate to a corporate matter involving a duty resting upon the corporation, so they each and all bind all the stockholders; since the stockholders, whether past or present, and whether holding the stock in their own name or that of an agent or dummy, by becoming stockholders impliedly agreed that all such matters should be determined by the court without personal service upon them, as provided by the statute in force when they took their stock. As was said in Hawkins v. Glenn:

> "We think it cannot be doubted that a decree against a corporation in respect to corporate matters, such as making an assessment in discharge of a duty resting on the corporation, necessarily binds its members in absence of fraud and that this is involved in the contract created in becoming a stockholder. A stockholder is so far an integral part of the corporation that in view of the law, he is privy to the proceedings touching the body of which he is a member."
>
> Hawkins v. Glenn, 131 U. S. 319, 331.

A stockholder who transfers his stock under Sec. 2864 is presumed to know of the existence of any then existing indebtedness of the corporation; and in an action upon an assessment a past stockholder is no more entitled to common law proof of the existence of the indebtedness for which he is liable than as a present stockholder. In his answer defendant Selig did not assert that there was no indebtedness for which he was liable, but merely denied knowledge or information thereof sufficient to form a belief (R. 25). Defendant by becoming a stockholder under the Minnesota Statutes and laws impliedly agreed that in

the event of the transfer of his stock the question of the existence of indebtedness as to which he should remain a stockholder and liable should be determined in the winding up action and assessment proceedings. In an action to enforce the assesemnt, a past stockholder or one who has transferred his stock, can no more call in question the decree adjudging when the debts arose and the amount of the debts than the decree adjudging the corporation insolvent and appointing a receiver. It was not necessary that any stockholders should be personally before the Court when the decree was pronounced adjudging when the debts arose and the amount of the debts, any more than that they should be personally there when the order or decree was pronounced adjudging the corporation insolvent and appointing a receiver.

Sanger v. Upton, 91 U. S. 56, 58;

Hawkins v. Glenn, 131 U. S. 319, 331 (supra);

Bernheimer v. Converse, 206 U. S. 516 (supra);

Straw and E. Mnfg. Co. v. Kilbourne, 80 Minn. (supra).

V.

IT IS NOT NECESSARY THAT THE RECORDS SHOULD SHOW THE GROUNDS OF A DECREE OF ASSESSMENT AGAINST ANY PERSON OR PARTY ADJUDGED LIABLE THERETO, AND EVEN WHERE ONE OF THE GROUNDS IS THAT AN ALLEGED TRANSFER IS NOT BONA FIDE BUT TO A DUMMY, THE REAL OWNER IS CHARGEABLE IN AN ACTION AT LAW.

Both the complaint in the sequestration action (R. 11), and the petition for an assessment (R. 105), contain allegations that the alleged transfer by defendant of his stock was made after a large amount of the allowed indebtedness had arisen and that the alleged transfer was without con-

sideration and with an agreement that defendant should remain the owner of the entire beneficial interest in the stock. The Court was not required to state whether the decree of assessment was based upon the fact of the existence of the allowed indebtedness which arose prior to the alleged transfer by defendant of his stock or upon a finding that such alleged transfer was not bona fide but to a dummy. The judgment roll in adjudging the existence of prior indebtedness states one ground upon which defendant is liable upon the assessment; and the fact that the decree of assessment, as a decree pro confesso as to defendant, by thus adjudging that the alleged transfer was not bona fide, may be regarded as stating another ground, affords no reason why the action should have been brought in equity as claimed by counsel upon his motion to dismiss.

The real owner of stock held by him in the name of a dummy is properly charged in an action at law with the statutory liability.

Davis v. Stevens, 17 Blach. 259, 263;
Hunt v. Reardon, 93 Minn. 375; 101 N. W. 606;
Rankin v. Fidelity Tr. Co., 189 U. S. 242;
Ohio Valley Natl. Bank v. Hulitt, 204 U. S. 162;
Marcy v. Clark, 17 Mass. 329.

THE ASSESSMENT IS NOT SUBJECT TO BE ATTACKED COLLATERALLY ON THE GROUND THAT NO FACTS ARE FOUND WHICH SHOW THE DEFENDANT TO BE SUBJECT TO THE FULL ASSESSMENT OF ONE HUNDRED DOLLARS PER SHARE.

Findings of fact are not necessary. Straw and Ellsworth Mnfg. Co. vs. Kilbourn, 80 Minn. 125 (supra). The judgment adjudges when each claim arose and shows that a large amount of the indebtedness arose prior to the alleged transfer by defendant of his stock; and, therefore, the order of assessment is against defendant. Under the Minnesota Statute the decree of assessment is conclusive in

Minnesota as to its amount upon each and every person subject thereto. Chap. 272, Sec. 5.

Straw and E. Mnfg. Co. v. Kilbourne, 80 Minn. (supra);

Levison v. Hamilton, 204 Fed. 72;

Kennedy v. Gibson, et al, 8 Wall. 498, 505;

Keyser v. Hitz, 133 U. S. 238;

Bushnell v. Lilland, 164 U. S. 684;

Casey v. Galli, 94 U. S. 673.

Under the full faith and credit clause of the Federal Constitution, it was required that the assessment should be given the same effect in New York which it has in Minnesota.

Converse v. Hamilton, 224 U. S. 749; 32 Sup. Ct. Rep. 415.

Since defendant Selig is, in any event, bound by the assessment by reason of allowed indebtedness which arose prior to the alleged transfer of his stock, the question of whether such alleged transfer was bona fide or to a dummy was a necessary question only in the assessment proceedings where it must be presumed to have been decided adversely to defendant if there thought necessary to sustain the assessment for the full amount of the stock.

VI.

NEITHER THE QUESTION OF THE EXISTENCE OF THE ALLOWED INDEBTEDNESS, WHICH AROSE PRIOR TO THE ALLEGED TRANSFER BY DEFENDANT OF HIS STOCK, NOR THAT OF THE BONA FIDES OF SUCH ALLEGED TRANSFER, WERE JURISDICTIONAL QUESTIONS.

The questions of when the indebtedness arose and whether the alleged transfer was valid or void were a part of the subject matter in respect to which jurisdiction, or the

power of the Court to act, was set in motion by the allegations in the complaint in the parent suit, (R. 11) and in the petition for an assessment (R. 105), that defendant's alleged transfer of his stock was without consideration, merely colorable and made after a large part of the allowed indebtedness has arisen. The Court thus acquired jurisdiction over the defendant, for otherwise no assessment could be adjudged as to him and his liability could not be enforced. And accordingly upon the hearing on the petition for an assessment the Court proceeded to determine the truth or falsity of the above allegation as to when the debts arose, and as to the character of the alleged transfer. As was said in Peninsular Sav. Bank v. Ward:

> "Jurisdiction of the subject matter always depends upon the allegations, and never upon the facts. When a party appears before a tribunal and alleges that a certain right is denied him, and the law has given the tribunal the power to enforce that right,—his adversary being notified,—it must proceed to determine the truth or falsity of his allegations. The tribunal must have jurisdiction before it can take an adverse step. Its jurisdiction necessarily has to be determined from the allegations. If this is not so, we have the absurdity of being obliged to try the merits to determine the question of jurisdiction. Manifestly, if the allegations are inadequate to confer jurisdiction, the want of jurisdiction appears upon the face of the proceeding. If they are adequate, there is certainly jurisdiction to inquire; i. e., try the question raised by the pleadings. Is it not paradoxical to say that the Court has jurisdiction to try the case, but no jurisdiction to render a judgment? And that, notwithstanding the right to try and determine the case, its determination has no force, but may be set at naught by the lowest Court in the land, on a trial on the merits, even after affirmance by a Court of last resort. Such is the logical consequence of saying that a judgment may be attacked collaterally by matters outside the record."
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> Peninsular Sav. Bank v. Ward, 118 Mich. 87, 97, 98; 79 N. W. Rep. 911, 912, 913.
>
> Van Fleet, Coll. Attack, Sec. 60.

The plaintiff would have no right in the case at bar to offer proof of the existence of prior debts to establish the jurisdiction of the Minnesota court, to decide that question. If this is not so we have the absurdity of being permitted to try the merits here for the purpose of determining whether the Minnesota court had jurisdiction to try the merits of the same question; with the added absurdity that there could be a valid trial of the question of when the debts arose only in an action to wind up the corporation to which the corporation and all stockholders and all creditors are made parties either personally or through representation by the corporation.

To illustrate the absurdity pointed out in Peninsular Sav. Bk. v. Ward (supra), let it be supposed that one of several stockholders, who transferred their respective holdings of stock subsequently to the time of the accrual of a large amount of the allowed indebtedness, as alleged in the complaint and in the petition, personally appeared in the assessment proceedings. Could it be reasonably claimed that a judgment by the Minnesota Court determining the date when the respective claims arose, and that a large amount of the indebtedness arose prior to the stock transfers, which would be conclusive as to the corporation and the creditors and the stockholder who personally appeared would not be equally conclusive upon the stockholders who were before the Court through representation by the corporation and by mailed and published notice? Certainly not. For such a claim would lead to the absurd conclusion that the stockholders who did not personally appear are liable to a different assessment from the stockholder who personally appeared, or that their liability cannot be enforced at all.

The claim of counsel that the question of when the debts arose, and of the bona fides of the transfer, were jurisdictional questions, in the sense that their determination by

the Minnesota Court was not conclusive, results from a failure to distinguish between the facts required to give the Court jurisdiction of the parties and the subject matter and those facts without allegations and proof of which a decree could not be entered. In pointing out the importance of this distinction, the Court, in Reinach v. Atlantic and G. W. R. Co., says:

> "There is a clear distinction between those facts which involve the jurisdiction of the Court over the parties and the subject matter and those quasi jurisdictional facts without allegations of which the Court cannot be set in motion, and without proof of which a decree could not be pronounced. The judgment of a Court having no jurisdiction of the subject matter or the parties is null and void, and may be impeached in collateral proceedings, and the record of the Court showing such jurisdiction may be contradicted by parol evidence. * * * But there are certain facts termed 'quasi jurisdictional,' which must be alleged and proved, but, when so proved are res adjudicata and binding in collateral proceedings."
>
> Reinach v. Atlantic, etc., Ry. Co., 58 Fed. Rep. 33, 42, 43;
>
> 12 Encyclopedia Pl. and Pr., 129.

Under the statute the Minnesota Court had the power to proceed to a determination of the matters upon being shown by the pleadings that it was claimed and properly alleged that there were allowed debts which arose prior to the transfer and that the transfer was merely colorable and void. Action by the Court upon these allegations was necessary to a decree adjudging defendant liable or subject to an assessment, for it was the only proceeding in which such liability could be enforced. Allen v. Walsh, 25 Minn. (supra). And the decree must adjudge defendant liable or subject to the assessment in order that the assessment may be enforceable against defendant. Secs. 3 and 5; Rev. Laws, Sec. 3185, 3186; Hamilton v. Titus (supra), Hamilton v. Levison (supra). One who has transferred his stock

remains a stockholder within the meaning of the statute for the purpose of a determination of the question of the existence of prior debts and of his being adjudged liable or subject to an assesment. Sec. 1, Chap. 272; Tiffany v. Giesen, 96 Minn. (supra), Levison v. Hamilton (supra). And power in the Court to act was jurisdiction. As was said by the Court in United States v. Arredondo:

> "The power to hear and determine a cause is jurisdiction; it is 'coram judice,' whenever a case is presented which brings this power into action; if the petitioner states such a cause in his petition that on a demurrer the Court would render judgment in his favor it is an undoubted case of jurisdiction; whether on an answer denying and putting in issue the allegations of the petition the petitioner makes out his case is the exercise of jurisdiction conferred by the filing of a petition containing all the requisites and in the manner prescribed by law."
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> United States v. Arredondo, 6 Pet. 691, 709;
>
> Figge v. Bowlen, 185 Ill. 234, 240, 241; 57 N. E. Rep. 195;
>
> Fisher v. Bassett, 6 Leigh, 119, 131.

If the defendant had not acquired the stock and thereby induced creditors to give the corporation credit on the faith of his being a stockholder, and had done nothing to give rise to a question to be litigated, the Minnesota Court would have acquired no jurisdiction, or power to hear and determine, and the decree would be absolutely void as to him. But in so far as the jurisdiction of the Court to pronounce the decree of assessment depended upon the existence of prior debts or the transfer being colrable merely and void, it was conclusively determined by the decree. As was held in Wright v. Douglass:

> "In respect to Courts of general jurisdiction it is to be presumed that the Court had jurisdiction till the contrary appears. But the want of jurisdiction may always be shown by evidence, except when jurisdiction depends upon a fact that is litigated and is adjudged in favor of the party who avers jurisdiction. Then

> the question of jurisdiction is judicially decided and the judgment recorded is conclusive evidence of jurisdiction until, set aside, or reversed by a direct proceedings by appeal or a writ of error."
>
> Wright v. Douglass, 10 Barbour 99.

Therefore, neither the fact that they were prior debts nor the fact that the alleged transfer was not bona fide were jurisdictional fact; although the allegation of these facts may have been necessary to set the Court in motion, and the proof of them necessary to the pronouncing of the decree. In so far as the jurisdiction of the Minnesota Court or its power to proceed involved or required the allegation of the existence of prior debts or the allegation of the colorable character of the transfer, the decree of the Court has determined that these allegations are true. And it makes no difference whether the jurisdiction to pronounce the decree resulted from a finding of fact of the existence of prior debts or the fact that the transfer was colorable merely and void, or a finding of both of these facts; for, when jurisdiction once attaches upon any ground, the Court has jurisdiction to decide every question which arises.

Enc. of Pleading and Pr., Vol. 12, 197.

It, therefore, appears, we think, that in actions upon assessments there is no more reason to claim that the records of the Minnesota Court are incompetent to prove the existence of prior debts for which past stockholders are liable than to prove the existence of general indebtedness for which present stockholders are liable; and we are now brought to the question whether the statute, as construed by the trial Court, is repugnant to any provisions of the state or Federal Constitution.

VII.

THE STATUTE IN CONFERRING UPON THE MINNESOTA COURT JURISDICTION, WITHOUT PERSONAL SERVICE, TO BRING BEFORE IT IN THE ASSESSMENT PROCEEDINGS STOCKHOLDERS, WHO HAVE TRANSFERRED THEIR STOCK, FOR THE PURPOSE OF CONSIDERING PROOFS AS TO WHAT PARTIES ARE LIABLE OR SUBJECT TO AN ASSESSMENT AND ADJUDGING AN ASSESSMENT AGAINST THEM, IS CONSTITUTIONAL.

We have already pointed out under Subdivision 1 of this brief that the conferring of such jurisdiction was necessary, since without it the liability of past stockholders could not be enforced at all.

The constitutionality of Chapter 272 has been sustained by the Supreme Court of Minnesota in Straw and E. Mnfg. Co. v. Kilbourne (supra), and by the Supreme Court of the United States in Bernheimer v. Converse (supra).

But it is claimed by plaintiff in error that these decisions sustain the act only in its application to present stockholders, and that the provision for bringing past stockholders before the Court in the assessment proceedings without personal service is not due process of law, for the alleged reason that having transferred their stock, they are no longer stockholders and, therefore, not represented through the corporation. But Sec. 2864, as construed in Gunnison v. U. S. Inv. Co., 70 Minn. 291, 73 N. W. 149, provides that as to prior debts one cannot change or affect his relation or liability as a stockholder by any transfer of his stock. As to prior debts, then, the transfer is without effect. As was said by the learned trial judge in the decision of this case (R. 29):

> "Moreover, Sec. 2864 was in substance in existence when Selig took his stock. Therefore, he took it sub-

> ject to a continuance of his liability after a transfer, and it begs the question to say that he had severed his connection with the corporation in 1904. The statute says quoad then existing indebtedness he did not."

In Levison v. Hamilton (supra) the defendant called in question the constitutionality of the law; and in its decision affirming the judgment the Circuit Court of Appeals, without expressly referring to the constitutional question, decided the entire question of jurisdiction by holding that the existence of allowed indebtedness, which arose prior to the surrender by defendant of his stock subjected him to the jurisdiction of the Minnesota Court without personal service.

As we have already pointed out, under Subdivision IV of this brief, the assessment proceedings, as a part of the winding up action, were initiated by a pleading in the form of a petition to the Court and duly filed therein; that upon filing of the petition the receiver and creditors became entitled as a matter of absolute right to a hearing and trial of the issues presented by the petition; that each and all of the stockholders and parties liable were named in the petition and given due notice of the hearing, both by publication and by mail, that the proceedings are in the nature of an equitable action against the stockholders and persons and parties liable; that the Court can order an assessment only upon proof of service of notice, as provided by statute and order of the Court and after a trial, and that the order of assessment is a final judgment, within the limits of the scope of such judgment, as to those against whom it is ordered and who have the right to appeal therefrom.

There can be no question but that service by mail and publication satisfies the constitutional requirements of a judgment against defendant of the limited scope of the decree of assessment. Defendant had no constitutional

right to personal service, since by becoming a stockholder he impliedly agreed that in the event of insolvency of the corporation he could be brought before the Minnesota Court in the winding up action and assessment proceedings, without personal service, for the purpose of a determination of the question of the existence of indebtedness for which he remained liable, the question of when the claims arose, the interest thereon, and the amount of the indebtedness, and all questions relating to the necessity for and amount of the assessment.

Straw and E. Mnfg. Co. v. Kilbourne, 80 Minn. 125;

Bernheimer v. Converse, 206 U. S. 516; 27 Sup. Ct. Rep. 755;

Levison v. Hamilton, 204 Fed. 72;

Tiffany v. Giesen, 96 Minn. 488, 490; 105 N. W. 901.

The question of whether the assessment proceedings are due process of law as against defendant Selig seems to depend upon the constitutionality of Sec. 2864, which, as construed by the Supreme Court of Minnesota, provides, in effect, that "the prohibition against the transfer of shares in a corporation so as to affect the liability of stockholders for existing debts is absolute." Gunnison v. U. S. Inv. Co. (supra). In the case last cited, the Court further says:

> "It is entirely competent for the legislature to regulate the transfer of the shares in a corporation and declare the effect of such transfer, if no impairment of liability as fixed by the constitution is made."

So far from being in contravention of the constitution, Section 2864 and similar statutes merely compel a stockholder, who has invited credit to the corporation on the faith of his being a stockholder, to respect the obligation of his contract to pay, in case of insolvency, to the amount of his stock. The constitutionality of such statutes has seldom been questioned.

Gunnison v. U. S. Inv. Co. (supra);

Tiffany v. Giesen, 96 Minn. 488 (supra);

Hyatt v. Anderson, 74 S. W. Rep. 1094;
White v. Green, 105 Iowa 176; 74 N. W. 929;
Brown v. Hitchcock, 36 Ohio St. 667;
Wyman v. Bowman, 127 Fed. 257;
Jackson v. Meek, 9 S. W. 225.

By transferring his stock the transferror impliedly consents to remain a stockholder so long as any then existing debts remain unpaid, and that as such stockholder he shall not have the right to vote or to participate in the management of the corporation, except through the corporation. In this regard his relation to the corporation is like that of a preferred stockholder who takes his stock with the agreement that he cannot vote or participate in the management of the corporation.

The past stockholder is privy to the proceedings to wind up the corporation and assess its stock because such proceedings relate to the enforcement of an obligation resting upon the corporation and which the stockholder assumed and impliedly agreed to pay by his act in becoming a stockholder. Since the obligation springs from and necessarily implies membership in the corporation, a stockholder cannot divest himself of that relation or membership so long as the obligation remains unpaid. The derivation of the principle of the stockholders' representation through the corporation is traced to the obligation which arises from acquiring the stock, and the principle applies so long as the obligation remains unpaid. The implied contract of representation springs from the obligation and continues until the obligation is discharged.

VIII.

THE CONSTITUTIONAL LIABILITY OF THE STOCKHOLDERS DID NOT PASS TO THE TRUSTEE IN BANKRUPTCY AND THE DISCHARGE IN BANKRUPTCY DID NOT AFFECT THE RIGHT OF CREDITORS TO ENFORCE THE LIABILITY BY MEANS OF AN ORDER OR DECREE OF ASSESSMENT IN THE STATE COURT.

It is expressly provided by the bankruptcy act as follows:

> "The bankruptcy of a corporation shall not release its officers, directors or stockholders as such from any liability under the laws of a state or territory of the United States."
>
> Bankruptcy Act, Sec. 4, as amended by Act of 1903.

> "But the constitution or statutory liability is directly to the creditors. The corporation cannot enforce it. It is no part of its assets."
>
> In re Peoples Live Stock Ins. Co., 56 Minn. 180, 185; 57 N. W. 468.

In the case at bar the receiver acquires his right and power to enforce the liability as the statutory representative of the creditors.

Straw and Ellsworth Mnfg. Co., 80 Minn. (supra);
Bernheimer v. Converse, 206 U. S. (supra).

If by reason of a discharge in bankruptcy, or for any other reason, it is impossible to procure judgment against the corporation and the return of execution unsatisfied as the basis of the sequestration action, the Court will exercise its general equity powers to give the creditors an adequate remedy to enforce the liability of stockholders through a sequestration action and the assessemnt pro-

ceedings authorized by Chapter 272, Laws of 1899. (R. L. 1905, Secs. 3184-3190.)

Way v. Barney, 116 Minn. 285;

Marshall Paper Co. v. Train, 102 Fed. 872;

Hill v. Harding, 130 U. S. 699;

Firestone Tire and Rubber Co. v. Agnew, 194 N. Y. 165, 169.

IX.

THE ACTION WAS COMMENCED WITHIN THE SIX YEARS LIMITATION PRESCRIBED BY SEC. 382 N. Y. CODE CIV. PROC. AND THE CAUSE OF ACTION IS NOT BARRED.

Section 394, of the N. Y. Code of Civ. Proc. relates only to a liability in the nature of a penalty, while the liability of a stockholder of a Minnesota corporation,

> "is not penal or statutory in its character, but purely contractual, containing all the elements of a contract, and is to be enforced as such."

Hanson v. Davidson, 73 Minn. 454; 76 N. W. 254;

Straw and E. Mnfg. Co. v. Kilbourne, 80 Minn. (supra).

The case at bar falls under Sec. 382 of the N. Y. Code of Civ. Proc., which is as follows:

> "Sec. 382. Within Six Years—
>
> 1. An action upon a contract obligation or liability, express or implied, except a judgment on sealed instrument.
>
> 2. An action to recover upon a liability created by statute, except a penalty or forfeiture."

Section 394 has no application to the case at bar, for two reasons, (1) it relates exclusively to the liability of officers and stockholders of moneyed corporations, and (2) it relates exclusively to penalties and forfeitures. To claim otherwise would be to give no force or effect whatever to Sec. 382, which provides that actions to recover upon a

liability created by statute, except a penalty or forfeiture, shall be commenced within six years.

Sections 394 and 382 are to be construed together, and effect is to be given to both; and this is the construction which has been placed upon them by both the state and the Federal courts.

In Phillips v. Therasson, 11 Hun. (18 Sup. Ct. R.) 141, the Court says:

> "The actions against stockholders, other than those of moneyed or banking corporations, are to be commenced within six years after the cause of action accrued. The exclusion of that class from Sec. 109 just quoted is evidence of the legislative intent on the subject."

The distinction is clearly pointed out in Knox et al v. Baldwin, where the decision relates to two causes of action, one to enforce the liability incurred by trustees for a failure to file a report, which is a penalty; and the other to enforce the liability imposed in case all the capital stock has not been paid in, which is contractual. The case of Knox v. Baldwin was decided in April, 1880, when Sections 394 and 382 were as they are now; and the Court held that the first above mentioned cause of action was barred in three years, while the second was not barred until the expiration of six years.

Knox et al v. Baldwin, 80 N. Y. 610.

The words, "a liability created by law or by statute" in Sec. 394, depend for their meaning upon the words "a penalty or forfeiture," immediately preceding, under the familiar maxim *Noscitur a Sociis*, which requires them to be construed as meaning something of the same or like nature with forfeitures and penalties.

Corning v. McGullough, 1 N. Y. 47;

Conkling v. Furman, et al, 45 N. Y. 527.

The exact point here raised upon the question of the statute of limitation was decided adversely to plaintiff in error in Bernheimer v. Converse, 206 U. S. 516 (supra), in which the Court held, as stated in the syllabus:

> "A cause of action to enforce the liability of a stockholder under the Minnesota Constitution and laws does not accrue so as to start the running of the six years limitation, prescribed by N. Y. Code of Civ. Proc., Sec. 382, until the receiver of the corporation can sue upon the assessment after the stockholder has failed to pay, as required by the order of Court."

We respectfully submit that the judgment should be affirmed.

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In the Supreme Court of the United States.

ARTHUR L. SELIG,
Plaintiff-in-Error,

against

CHARLES E. HAMILTON, as Receiver of Evans, Johnson, Sloane Company, a corporation,
Defendant-in-Error.

361.

POINTS IN REPLY FOR PLAINTIFF-IN-ERROR.

At page 22 of the brief defendant-in-error relies on *Hamilton* vs. *Levison, 198 Fed., 444, aff'd. 204 Fed., 72.* In that case the defendant was the holder of record at the time of the assessment, but claimed that he had previously surrendered his certificate to the attorney for the company. The defendant conceded that a part of the indebtedness arose prior to the date of said surrender. This was considered a jurisdictional fact. HAND, *J., page 446* says:

> "The next question is whether there actually existed these jurisdictional facts, and to determine this I may not look at the record at all. * * * It is conceded * * * that during that period

(prior to claimed surrender of certificate) there were incurred some debts which were not paid at the time of the decree here sued upon."

The Minnesota Court could not bind defendant by a decision that defendant was a stockholder, nor by a decision that defendant was a stockholder at any particular date, even if any such decision had been made. The fact that the assessment is not applicable to defendant and was not so based as to be applicable to defendant is a jurisdictional and personal matter, and the order of assessment is not conclusive.

In *Hamilton* vs. *Levison, supra,* defendant was the owner of record at the time of the assessment, and hence, *prima facie,* was liable as a present stockholder. It was apparently not urged that the assessment was not applicable to defendant, as not based on prior debts or any findings of prior indebtedness or colorable surrender of stock; or that the decree of April 23, 1907, did not adjudge when debts arose; or that the defendant was liable only ratably; or that the notice of hearing on the petition for assessment was not mailed to the creditors (main brief, *page 40*). The question of the Statute of Limitations was not involved in the case.

In *Hamilton* vs. *Levison, supra,* the defendant being a holder of record at the date of the assessment was properly held, *prima facie,* liable thereon. It is submitted that so far as that case proceeds upon the theory that the order of assessment was, in effect, conclusive as a personal judgment, it is erroneous.

On page 3 of the brief of defendant-in-error certain claims are set out with the assertion that they were found and adjudged to have arisen wholly or partly prior to September 5, 1904. These were not found or adjudged otherwise than by the decree of April 23, 1907, which

merely finds that the schedule accurately sets out the claims as filed (See main brief, *page 22*).

Moreover, if the decree of assessment was not applicable to defendant when made and payable (September 4, 1906), it could not become so later by proceedings *ex-parte* as to him, and its meaning could not thus be changed at a later date.

On page 5 of the brief for defendant-in-error it is asserted that the colorable character of the transfer was before the Court in the assessment proceedings. It is clear that the Court did not pass upon the alleged colorable transfer of the stock. The order of assessment does not mention it. There are no findings. The words "parties liable as stockholders" in the order of assessment cannot bear this construction.

On page 19 of the brief of defendant-in-error it is asserted that the assessment proceedings were initiated by a petition alleging, as to stockholders who made transfers of their stock, that a large part of indebtedness arose prior to such transfer, and also setting forth the facts which show the nature of such transfers.

The petition for assessment uses practically the words of the brief: "after a large part of the aforesaid indebtedness had arisen" (*fol. 166*). The order of assessment was made on this petition (*fol. 179*). It does not mention any particular debts or when they arose, and therefore forms no basis for an assessment against these transferrors. It is plain that there was no attempt to consider at that time when debts arose because the creditors then had several months in which to present claims.

The assessment moreover was based upon all debts and upon all stock, and it was for this purpose entirely immaterial as to who were stockholders or when the debts arose. There was no attempt to make any assessment applicable to a prior holder. When that is done findings as to when debts arose are necessary.

On page 23 of the brief for defendant-in-error it is

asserted that the stockholder becomes bound by the assessment only by action of the Court after considering proofs which, as to prior stockholders who have transferred their stock, necessarily relate to the existence of prior indebtedness. This bears out the claim of the plaintiff-in-error that this assessment is not applicable to him, since it is apparent that it was entered without regard as to when the debts arose, and without findings as to that fact, and it is plainly based upon all the debts and all the stock. This is a personal defense, and the order of assessment is not a bar thereto.

Statute of Limitations.

It is argued in the brief for defendant-in-error (*pages 40-1*), that although Section 394 of the New York Code applies to the liability of stockholders and directors of business corporations, it is applicable only to penalties and not to a statutory liability, citing *Knox* vs. *Baldwin, 80 New York, 610, 613.* This case was decided in 1880. This section as enacted as Section 394, Chapter 448, Laws of 1876, provided:

> "This chapter does not affect an action against a director or stockholder of a moneyed corporation, or banking association, to recover a penalty or forfeiture imposed or to enforce a liability created by law; but such an action must be brought [within six years after the discovery, by the aggrieved party, of the facts upon which the forfeiture or penalty attached, or the liability was created].

By Section 360, Chapter 416, Laws 1877 the clause in brackets was stricken out and the following inserted: "within three years after the cause of action has accrued."

By Chapter 281, Laws of 1897, the section was amended to read as follows:

> "This chapter does not affect an action against

a director or stockholder of a moneyed corporation, or banking association, to recover a penalty or forfeiture imposed, or to enforce a liability created by the common law or by statute; but such an action must be brought within three years after the cause of action has accrued."

Knox vs. *Baldwin, 80 New York, 610,* was decided before the amendment of 1897. That case involved the liability of a stockholder of a manufacturing corporation where the capital stock was not paid up and no certificate filed by the trustees (Laws 1848, Ch. 40, Sec. 10). Six years had elapsed, and it was held that the action was barred. Since then the amendment of 1897 has made the statute include liabilities created by common law or by statute.

In *Gilbert* vs. *Ackerman, 159 New York, 118, 124,* the statute was held applicable to a common law action brought by the receiver of an insurance corporation against directors for moneys misapplied or wasted. This was not a case of penalty.

In *Platt* vs. *Wilmot, 193 U. S., 601,* the history of Section 394 is set forth, and it is held applicable in the case of foreign corporations. The corporation there involved was a moneyed corporation.

In that case it was also held (*page 613*) that although the liability of a stockholder was contractual in its nature, it was created by statute within the meaning of Section 394, and hence Section 394, and not Section 382, applies. That case fully recognizes that Section 394 applies to liabilities of this nature, and the only question left open is whether it applies in the case of business corporations. It is submitted that the Court of Appeals of New York has several times so held (main brief, *pages 47-8*). The tendency has been to broaden the statute and shorten the period of limitation. It now applies to

business corporations and to common law actions, and is no longer confined in any respect to the peculiar liabilities provided by the original revised statutes for directors and stockholders of moneyed corporations. There is no reason for holding the statute applicable to directors of business corporations and not to stockholders.

Respectfully submitted,

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